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JOHNS HOPKINS UNIVERSITY STUDIES

IN

HISTORICAL AND POLITICAL SCIENCE

Under the Direction of the

Departments of History, Political Economy, and

Political Science

VOLUME XXIX

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MARYLAND UNDER THE COMMONWEALTH

SERIES XXIX NO. 1

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HISTORICAL AND POLITICAL SCIENCE

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MARYLAND UNDER THE COMMONWEALTH

A CHRONICLE OF THE YEARS 1649-1658

BY

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BALTIMORE
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PREFACE.

The study here presented differs from the historical monographs usually published in this series, in that, instead of the development of a single theme in Maryland history, it offers a chronological view of a short period. The object is to present in as complete a manner as possible the facts on record relating to the years 1649 to 1658. This period has not been studied in detail since the publication of the corresponding volumes of the Maryland Archives, the Calvert Papers, and the Maryland Historical Magazine. The paper will, therefore, serve as a compendious record of established testimony. Appended is a summary of cases decided and matters considered in the Provincial Court. The nature of the controversies, the mixture of trivial and serious concerns which came before the chief judicial tribunal, throw light upon the occupations and welfare of the colony.

Similar accounts of earlier periods of Maryland history have been published in these Studies as follows: Beginnings of Maryland, 1631–1639, Series XXI, Nos. 8–10; Maryland during the English Civil Wars, Part I, Series XXIV, Nos. 11–12; Part II, Series XXV, Nos. 4–5.

MARYLAND UNDER THE COMMONWEALTH.

I. Provincial Conditions in 1649–50.

The year 1649 opens a distinct period in the history of the Province of Maryland. William Stone had come from the Eastern Shore of Virginia to be Governor, and with him, doubtless partly at his solicitation, came a number of settlers destined to bring a new religious and political influence into the Province. The legislature had just passed the famous toleration act, placing in permanent form what had been the policy of the Proprietary from the beginning of his colony. The coming of new settlers was shortly to lead to the formation of two new counties and to do away with the conditions existing when there were only two centres, St. Mary's and Kent Island. The fall of the monarchy in England placed new influences in control there, which must be reckoned with, and the colonists, as always, were eagerly looking to the mother-country for countenance in their acts. A Protestant Governor in the Province had to satisfy a Roman Catholic Proprietary and a Puritan Commonwealth in England. Such were conditions when spring came in 1649.

A Congregational, or Independent, church had been formed in Virginia in 1642, and had the benefit of a New England clergyman for a time.[1] In spite of the laws of that

[1] Beverly, History and Present State of Virginia, 51, 229. Burk, History of Virginia, II, 67, 75. Holmes, Annals of America, I, 198, 321. Bozman, History of Maryland, II, 370, 373. Hall, The Lords Baltimore and the Maryland Palatinate, 54. They sent to New England for ministers in 1642. In 1643 Virginia passed an act ordering nonconformists to leave the Province with all convenience. Neill, English Colonization of America during the Seventeenth Century, 278 ff., on Dr. Thomas Harrison and the Virginia Puritans. Hawks, Early History of the Southern States, 57. Neill, Virginia Carolorum, 165 ff. Neill, Founders of Maryland, 116. Davis, The Day-Star of American Freedom, 68 ff.

colony against dissenters, which had begun in 1639, "though as yet none" lived in the Province, this church had so increased as to be said to number one hundred and eighteen members in 1648. In the latter year Sir William Berkeley determined on a more rigid enforcement of the laws for conformity and broke up the church. The members of the organization dispersed: Thomas Harrison, the pastor, went to Boston toward the end of the year, and William Durand, the elder, Richard Bennett, and a number of others came to Maryland. It is quite probable that the bringing of these Puritans to the Province was the inducement named in Stone's commission as the reason for his appointment as Governor. During the whole of the year 1649 they were coming into Maryland, and they made their settlement, calling it Providence, on the west side of the Chesapeake, above St. Mary's and near the mouth of the Severn River.[1] Probably their hamlet stood upon what is now Greenberry's Point, and there may have been three hundred settlers in all.[2]

No government appears to have been established over this settlement by the Provincial authorities before the summer of 1650, and Bozman's conjecture is quite probable that, as all the settlers were members of the same church, the church authorities, headed by Durand, kept the people in order. Though many have thought that Baltimore's officers invited the Puritans, Leonard Strong, one of their own number, expressly denied this,[3] and John Langford, writing on the Proprietary side in the controversy, says that they were only "received and protected."[4] Hammond, in "Leah and Rachel," says that the Puritans courted Maryland as a

[1] D. R. Randall, A Puritan Colony in Maryland (Johns Hopkins University Studies in Historical and Political Science, Series 4, Number 6, pp. 17, 19). R. H. Williams estimated the number at from five to eight hundred. J. W. Randall, Address in Hall of House of Delegates at Invitation of Mayor and Council of Annapolis on 250th Anniversary of Passage of Act Concerning Religion, 12, 16. Davis, 68, but see Ridgely, Annals of Annapolis, 33.

[2] Davis, 83. Sixty tracts of land in St. Mary's County have prefix St. and only three in Anne Arundel County (Davis, 150).

[3] Babylon's Fall in Maryland. See below, p. 85.

[4] A Just and Cleere Refutation of a false and scandalous Pamphlet Entituled Babylon's Fall in Maryland. See below, p. 86.

refuge: "their conditions were pitied, their propositions were hearkened to," that they "should have convenient portions of land assigned them, liberty of conscience and privilege to choose their own officers and hold courts within themselves, all was granted. They had a whole county of the richest land in the Province assigned them." Each one was granted land according to the Conditions of Plantation, which were common to all adventurers. Richard Bennett, who was a merchant, seems to have resided but little in Maryland. In August, 1650, he claimed that debts were owed him by Copley and other Marylanders for goods and that Lewger's house and property in the Province had been transferred to him.[1] He appointed Hatton his attorney for the collection of these debts, and conveyed to John Lewger, Jr., his father's house and land, subject to Hatton's advice. Lewger shortly afterwards, with Hatton's assent, conveyed the manor of St. John's to Henry Fox for five thousand pounds of tobacco, half of which sum should be paid to Bennett. Randall[2] in an able address has pointed out that Bennett had quite probably come into Maryland with his wife as early as 1646. He was a member of the grand jury at St. Mary's in December, 1648.[3] On January 7, 1649/50, Durand applied for nine hundred acres of land for having transported into the Province himself and seven other persons in March, 1648/9. The first actual certificate for land in what became Anne Arundel County was issued to Richard Beard on January 6, 1650/1, for two hundred acres on the south side of South River. On March 17, 1650, George Puddington, one of the prominent Puritans, asked for a grant of eight hundred acres of land for "having transported into this Province, at his own expense the previous year, himself and 7 persons," and a number of similar applications follow on the land records.

News of the reception of the Puritans, of Baltimore's time-serving policy, possibly of his failure to have Charles

[1] 10 Md. Arch., Prov. Ct., 66, 70; Davis, 69.
[2] J. W. Randall, 11.
[3] 4 Md. Arch., Prov. Ct., 321, 447, 521.

II promptly proclaimed as his father's successor, reached that claimant of the English throne,[1] and from his place of exile on the Continent he issued a commission on February 16, 1649/50, to Sir William Davenant, the poet, Shakespeare's godson, constituting him Governor of Maryland, "alleging therein the reasons to be, because the Lord Baltimore did visibly adhere to the rebels in England and admitted all kinds of sectaries and Schismatics and ill affected persons, into that plantation." It is quite probable that this commission was sent from Breda, on June 20, 1650, when a commission was sent Berkeley as Governor of Virginia. The Queen Henrietta Maria is said to have sent out Davenant with weavers and mechanics, but his ship was captured and that danger averted from the Province.

In the spring of 1649 Stone had left Maryland for a short period, probably to go to Virginia, and on May 2 he appointed Greene[2] as his deputy, directing that Hatton, the Secretary, succeed in case of Greene's refusal. Stone had returned before July 7, and again left the Province in Greene's hands on September 20, 1649. After Stone had been absent for a few weeks, on November 15 Greene was guilty of the crass stupidity of proclaiming Charles II as King[3] and pronouncing a general pardon to all the inhabitants of the Province upon that occasion.[4] It is uncertain when Stone returned to Maryland, but he was back[5] before January 24, 1649/50. A day or two after the beheading of Charles I, the House of Commons by ordinance had declared that any person "who should presume to declare Charles Stuart, son of the late Charles," to be King, "should

[1] Bozman, II, 409, 675. D. R. Randall (A Puritan Colony, 25) thinks that Berkeley had reported to Charles II that Baltimore had given shelter to heretics. Neill, Founders of Maryland, 126; The Lord Baltimore's Case, concerning the Province of Maryland adjoining to Virginia in America; Langford, A Just and Cleere Refutation. For Davenant's commission see Maryland Historical Magazine, I, 21.

[2] 3 Md. Arch., Coun., 231.

[3] 4 Md. Arch., Prov. Ct., 496; 3 Md. Arch., Coun., 242; Bozman, II, 377.

[4] 3 Md. Arch., Coun., 243.

[5] 4 Md. Arch., Prov. Ct., 538; 1 Md. Arch., Ass., 259.

be deemed and adjudged a traitor." Scotland, Ireland, and Virginia supported the royal cause for a time; but, though news of Charles's death must have come to Maryland months before Greene's proclamation, Stone had followed Cecilius Calvert's cautious policy and had taken no action. Maryland was peculiarly fortunate in not being required to announce her position, as writs in the Province ran in the name of the Proprietary, not in that of the King, and Greene's act was of a most foolhardy character, besides being unsuitable from a mere locum tenens.

When Greene took the oath as Governor that September,[1] he did not do so without reservation, as he should have done, and when seated in office he resolved to act contrary to Hatton's advice. Hatton, fearing that Greene's conduct, probably in proclaiming Charles II as King, "might much prejudice" Baltimore, showed Greene, at a Council meeting, another deputation of the office of Governor from Stone to the Secretary, upon the production of which the deputation of Greene became void. Hatton later wrote the Proprietary[2] that Greene still pressed on to accomplish his plans and furthermore said, insolently, "Although Baltimore should send directions to the contrary, I would do the same." Baltimore answered Hatton's letter by writing Stone, on August 6, 1650, that all things done by Greene as Governor are to be null and void, excepting such of them as Stone shall confirm. But the mischief had been done and Baltimore's enemies had been given their opportunity. Hatton did not get along well with the Roman Catholics, and one Walter Pakes complained to Baltimore about certain speeches of the Secretary with reference to those of that religion.[3] Hatton, by his own oath and by the testimony of the Assembly of 1650, however, fully cleared himself, in Baltimore's eyes, of "that foul imputation."

We must never forget that the Lord Proprietary was a great landowner as well as a ruler, and his anxiety to secure

[1] 1 Md. Arch., Ass., 313.
[2] We assume this from Baltimore's letter to Stone of August 6, 1650.
[3] 1 Md. Arch., Ass., 318; Davis, 247.

settlers on his land and rents from them explains many of his actions. His Governors were also his land agents, and in carrying out this agency, Stone, on April 13, 1649, issued a proclamation[1] commanding all "adventurers or planters" in the Province to take grants for their lands from the Proprietary, that the lapse of time might not make their rights doubtful and deprive Baltimore of his rents. From February, 1644, when the Provincial great seal was violently taken away, until the recent arrival of a new seal no one could receive a legal grant, but now the seal had come, and all persons resident in Maryland or Virginia who "pretend any right" to lands in the Province, as due them by the Conditions of Plantation, or by any other warrant from Baltimore given prior to March 17, 1648/49, but who had not yet received patents, were ordered to prove their right to the Governor before November 1. Persons absent from either Maryland or Virginia might have until March 25, 1650, to obtain grants, and if any failed to prove their right within the specified time, they "must blame their own obstinacy, if hereafter they be refused any such grants." On October 30 Greene, who was acting Governor, issued a second proclamation extending the time for all persons until March 25, as divers who had land could not have it surveyed in the time formerly limited without great damage by leaving their crops.[2] On March 25, 1650, Stone issued a third proclamation stating that certain persons had not acted under the former proclamations on pretence of not having notice of them, and, to the end that no man might justly pretend ignorance,[3] he extended the period further until Michaelmas (September 29). The most interesting result of this proclamation is that the Jesuits filed application on

[1] 3 Md. Arch., Coun., 229; Bozman, II, 374. Bruce in his Economic History of Virginia in the Seventeenth Century, I, 139, says that Bullock (Virginia, 4) is authority for the statement that some Virginians were in the habit of retiring into Maryland as soon as the heats of summer arrived, and that there they enjoyed uninterrupted good health.

[2] 3 Md. Arch., Coun., 243.

[3] 3 Md. Arch., Coun., 253.

August 14, 1650, for land due them for transporting fourteen men and a woman in 1633 and five men in 1634.[1]

There was still difficulty in the collection of rents, and on January 8, 1650/1, Stone, by proclamation, directed all the people of St. Mary's County to pay their rents to the Secretary before February 12 next.[2] No rigorous course was taken then, however, and on December 2, 1651, Stone a second time warned[3] the people of St. Mary's County and all others whose rents were payable at St. Mary's to pay Hatton before January 10 under penalty. Still there were arrears of rent left unpaid, and on March 20, 1651/2, Stone issued another proclamation stating that he would have the sheriff distrain upon the property of any inhabitant of the Province owing rent and not paying it within a fortnight.[4]

Bozman calls attention to the fact that no grants of lands to the Puritans whom Stone induced to come into Maryland are to be found prior to the creation of their settlement into Anne Arundel County in 1650, and remarks that the proclamations, to which we have referred, "strongly indicate the general opinion, which appears to have been now quite prevalent, . . . of the precarious continuance of the Lord Proprietary's government over the Province." "Planters and adventurers, who had obtained warrants for tracts of land, probably flattered themselves, that by a little patience and neglect in taking out grants, they would speedily be relieved from any rents to be claimed by his lordship."

On July 2, 1649, Cecilius Calvert signed, at London, new Conditions of Plantation, which he sent to Stone to be published in the Province.[5] They state that the Conditions of 1648 seem not "to give sufficient encouragement to many to adventure or plant" in Maryland, and they provide that he who imports thirty persons may have a grant of a manor

[1] 3 Md. Arch., Coun., 258.
[2] 3 Md. Arch., Coun., 260.
[3] 3 Md. Arch., Coun., 267.
[4] 3 Md. Arch., Coun., 268.
[5] Bozman, II, 377; 3 Md. Arch., Coun., 231; Kilty, The Land-Holder's Assistant, and Land-Office Guide, 47.

of three thousand acres, while formerly the limit was two thousand acres for the importation of twenty persons, and that for every person imported one hundred acres, instead of fifty, should be given on the payment of the same rent, namely, one shilling for each fifty acres. Bozman notes that the place of signature shows that Baltimore was not in particular ill favor with the Commonwealth.

A few months later Richard Ingle's hostility toward Baltimore was shown in a petition and remonstrance sent to the Council of State, which was read[1] on November 14, 1649, and referred to the consideration of the Committee for the Admiralty. The Council appointed December 20 for taking into consideration the business of Virginia and Maryland, but deferred the matter for a week, after hearing Ingle and Robert Rawlins, and summoned Baltimore and a number of merchants, among whom was Thompson, Claiborne's former partner. The matters were deferred to January 10, 1649/50, and again, after seven more postponements, to March 4. On February 19 Ingle complained concerning two ships going to Virginia. This remonstrance also was referred to the Committee for the Admiralty, who had power to stay the ships if they saw cause. Finally, on March 15, we discover that Ingle's complaint referred to the old commission from Charles I to Leonard Calvert in 1643, authorizing him to seize Parliamentary ships. The Committee directed the Attorney General and another lawyer to consider the "validity and invalidity of the original grant" of Maryland in 1632. Then came more delay and additional postponement, until October 3, when a petition was presented to the Council "on behalf of divers well affected persons of the Isle of Providence in Maryland."[2] As Parliament was considering the validity of the patents of the colonies, the Council referred the matter to a committee of their own number.

[1] 3 Md. Arch., Coun., 244–250, 252, 253. See "A Declaration shewing the illegality and unlawfull proceedings of the Patent of Maryland, 1649," in Brodhead, Documents Relative to the Colonial History of the State of New York, III, 23. The Virginia Magazine of History and Biography, XVII, 21.

[2] 3 Md. Arch., Coun., 254, 259.

For nearly a year from this time Maryland drops from the English records, save[1] that Richard Thurston, commander of a ship, was given leave to go to Maryland with his vessel to collect some debts and to trade, "provided he trades not with any places in defection to this Commonwealth," and that William Mitchell, "with his company, their families, servants, goods and necessaries," was given a like pass on September 3. Finally, on December 23, 1651, the Council of State read Baltimore's petition,[2] and ordered that he "be left to pursue his cause according to law and that, as things concerning the same shall be offered at the Council, the Council will take notice thereof as there shall be occasion."

While in these doubtful circumstances a heavy blow fell on Baltimore, for on July 23, 1649, his wife, the Lady Anne Arundel, died, aged thirty-four years. He described her on her tomb at Tisbury as "pulcherrima et optima conjux."[3]

II. The Assembly of 1650.

On January 24, 1649/50, Governor Stone issued a proclamation for the election of burgesses to an Assembly to be held at St. Mary's on the second of the next April.[4] The writ recited that "the manner of summoning Assemblies . . . is wholly left to the Lord Proprietor's discretion,"[5] and it directed all freemen of St. Mary's County to appear in person or by proxy, each freeman being limited to two proxies. An alternative method, which was actually used, was that the freemen of each hundred choose burgesses. If the freemen of each hundred did not agree as to whether they would be represented by proxies or by burgesses, they must all appear personally. The original writ assigned one

[1] 3 Md. Arch., Coun., 263.
[2] 3 Md. Arch., Coun., 267.
[3] Neill, Terra Mariae, 88. In the Historical Magazine, 2nd Series, III, 176, W. Willis speaks of a medal struck in her honor.
[4] 1 Md. Arch., Ass., 259.
[5] See 1 Md. Arch., Ass., 266; "Maryland Notes, 1650," by H. H. Goldsborough, William and Mary College Quarterly, V, 47, 131; Davis, 71.

burgess to St. Clement's and St. Mary's, one or two to St. George's, St. Inigoes, and St. Michael's, and two or three to Newtown Hundred; but the freemen of St. Mary's earnestly requested[1] that they might have two burgesses, as they were "the ancientest hundred and the first seated within this Province under his Lordship's government," and their petition was granted. Newtown, St. Michael's, and St. George's took advantage of the largest number allowed, but St. Inigoes sent only one burgess, so that eleven men represented St. Mary's County. To the Isle of Kent County a writ was sent for the election of one, two, or three burgesses, and Robert Vaughan, the sheriff, returned himself elected as the sole burgess.[2] When April 2 came, however, only the St. Mary's men appeared, and for a few days Stone adjourned the Assembly, which now met in two houses,[3] while he went in person to "that part of the Province now called Providence" and presided on Friday, April 5, at the choice of two burgesses by that Puritan settlement. On his return with those burgesses on the following day, Stone found that Vaughan had arrived, and the Assembly organized by the election on the part of the Lower House of James Coxe, one of the Puritans, as Speaker, and William Bretton as Clerk.[4]

The ascendancy of Protestants in this Assembly is noteworthy, and shows that there was no good ground for the accusation that the Proprietary unduly favored the members

[1] 1 Md. Arch., Ass., 260.

[2] Vaughan was also a Councilor but sat in either house, 1 Md. Arch., Ass., 261, 285.

[3] In 1649 the formula at the foot of each law was: "The freemen have assented. Enacted by the Governor." In 1650 the latter sentence remains the same, the former one is divided and reads: "The Lower House hath assented. The Upper House hath assented," 1 Md. Arch., Ass., 250, 286.

[4] The record says April 6, Sabbath (i. e., Saturday), 1 Md. Arch., Ass., 261. Stone, Hatton, Price, and Vaughan were Protestants, Greene was a Roman Catholic, Pile's religion is uncertain, and it is not known that he was present. Of the burgesses Coxe and Puddington of Providence, Vaughan, Sherman, Hatch, Beane, Brough, Robins, and Posey were Protestants, while Land, Brooke, Matthews, Manners, and Medley were Roman Catholics. Fenwick, a Protestant, later replaced Matthews, see Johnson, "The Foundation of Maryland," Maryland Historical Society, Fund Publication no. 18, and Davis, 207.

of his own faith. The Governor and at least three of the five Councilors and nine of the fourteen burgesses were Protestants, and a new election made the membership of the Lower House stand 10 to 4. There was "foul weather" on the sixth, so that three of the burgesses could not come.[1] The other eleven took a burgess's oath drawn up by Hatton for Stone at the burgesses' request, pledging the members to faithful performance of duty, to endeavors for advancing "the Lord Proprietor's just rights and privileges and the public good of this Province," and to secrecy as to what might pass in the Assembly.[2] A Clerk's oath was also prepared, and all those present took the oaths. On Monday, April 8, came the three burgesses who had been absent on Saturday. Two of them promptly took the oath; the third, Thomas Matthews, of St. Inigoes Hundred, refused and was given until afternoon to consider the matter. In the afternoon he continued in his refusal, stating that he could not take the oath and have free exercise of his religion, as the obligation to secrecy prevented him from telling his father confessor of what occurred in the house and so from being "guided in matters of conscience by his spiritual counsel."[3] Matthews was promptly "expelled and discharged of his place and vote," a new election in the hundred was ordered on the eleventh, and Cuthbert Fenwick was elected in Matthews's room. He appeared on the eighteenth and agreed to take the oath, "provided that it might not prejudice in any sort his religion or conscience." The House voted that he must take the oath "without any reservation," but might consider the matter till the morrow. In the afternoon, however, the House declared that the oath of secrecy was not meant to infringe liberty of conscience or religion, and Fenwick was thereupon sworn. Greene, however, the Roman Catholic member of the Council, had uttered "harsh speeches,"[4] taxing the House with injustice in expelling

[1] Hatch, Beane, and Matthews, 1 Md. Arch., Ass., 274.
[2] 1 Md. Arch., Ass., 261; Bozman, II, 383.
[3] 1 Md. Arch., Ass., 274–278.
[4] 1 Md. Arch., Ass., 276, 277.

Matthews, so on the tenth the Lower House sent a petition to the Upper House by their Speaker, "desiring vindication." In the debate upon the petition the Lower House felt that it was wrong for their members to take the oath of secrecy when the Upper House did not do the same, and it voted to petition the Upper House that members of the Council refusing to take the same oath should not have vote or seat in the Upper House during the Assembly.[1] No answer to the petition was made until the eighteenth, when the burgesses asked for a reply and were informed that the power of the Lower House to expel a member, when the Governor was not present, is denied, but that Matthews "expelled himself," as he did not come to "demand his voice, after the Governor himself was present in the House."[2] The Upper House must have taken the oath of secrecy, however, for on Monday, April 29, when the Assembly adjourned, both houses declared that no further secrecy was required after the close of the session.[3]

On the first day of the session order was given for "drawing the act and orders for settling the house,"[4] and these documents, probably drafted by Hatton, were submitted, and being unanimously adopted, were signed by Stone. The act for settling the Assembly formally adopted the bicameral system, and his division into two houses remained in force during the whole time of the Proprietary government.[5] The Upper House should consist of Stone and Hatton, with any one or more of the Council, while the lower one was composed of the fourteen burgesses, of which number five should be a quorum. Henceforth bills must be passed by the major part of both houses before the Governor signed them. The rules of order for the two houses were the same and were similar to those of previous legislatures, the only new features of importance being that the tobacco which

[1] Bozman (II, 388) gives this explanation of this troublesome matter.
[2] This restraint upon the Lower House is noteworthy.
[3] 1 Md. Arch., Ass., 284; Bozman, II, 390.
[4] April 2, 1 Md. Arch., Ass., 261.
[5] 1 Md. Arch., Ass., 273; Bozman, II, 385.

should accrue from fines on the burgesses was directed to be disposed of toward the relief of the poor.

On Saturday, April 6, the Conditions of Plantation were read,[1] as well as a long letter written to Stone and the General Assembly by Baltimore from London on August 26, 1649. The Proprietary is aggrieved that the sixteen laws were not passed. Stone, it seems, by a letter to Baltimore of the preceding twentieth of February had acknowledged the receipt of the code of laws and stated that "they were so just and reasonable, as that upon due consideration they ought to be well liked of by well affected men," yet the Assembly refused to enact all of them. This failure, the Proprietary hears, was caused "by the subtile suggestions of some, who ought rather to have assisted in promoting . . . a good correspondence, rather than to raise . . . jealousies or discontents." The report to Baltimore had been that the act of recognition of the charter and that for the oath of fidelity were the chief stumbling-blocks, as they contained the words "Absolute Lord and Proprietary" (which Baltimore reminds them is the exact title given in the charter) and "Royal Jurisdiction." Some said that the former term infers a slavery in the people of Maryland and the latter one exceeds the charter powers; Baltimore denies that the "former words import . . . such odious and sinister interpretation," or that he has any intention to enslave the people. The acts themselves prove this, having provision for freedom of conscience, for freedom from taxes except those laid with the Assembly's consent, for freedom from martial law except "in time of camp, or garrison, and within such limits," for freedom of trade with the Indians, on conditions tending more to the public good than to Baltimore's advantage. The charter gives Baltimore all the jurisdiction which the Bishops of Durham ever possessed, and "such as are best read in antiquities" know that prior to the reign of Henry VIII the Bishop had royal jurisdiction.[2] Bozman acutely remarks that the objection to the Proprietary's royal

[1] 1 Md. Arch., Ass., 262; Bozman, II, 367.
[2] Bozman, II, 368.

jurisdiction ran deeper than Baltimore supposed, and was not so much based on the supposition that his assumption of it was contrary to the charter, but rather "emanated from the same Republican spirit, which had destroyed the monarchy in England and now, diffusing itself into the minds" of the Puritans in Maryland, "began to exercise its animosities against everything that looked like monarchy under a colonial government."[1] Baltimore's letter shows clearly that he thinks that the Jesuits are at the bottom of the movement to reject his laws,[2] they hoping, in the division and faction which may follow, to revive their claim to lands given by or bought from the Indians for them. The Proprietary knows that his right to the Province needs no confirmation by the Assembly, but is derived from his charter and his "dear purchase" by the "expense of great sums of money, with much solicitude and travail;" yet he wonders that any well-affected person should be "backward in concurring to a public act of recognition." He urges the legislature to accept the whole sixteen laws as "more necessary for the people's good and the public there than for our own interests." In strong words Baltimore insists upon the legality of the Assembly of 1646/7, protests against the remonstrance of the Assembly of March, 1647, and disassents to several acts passed at that session.

In answer to the letter sent him by the Assembly of 1649 the Proprietary states that he also desires a good understanding with the people of the Province, but must repudiate the disposition of his cattle to Leonard Calvert for the payment of the soldiers who recovered the Province for Baltimore. With surprising pettiness Baltimore seems to have expected this payment to be borne by the Province, and states that only Lewger had the power to dispose of the Proprietary's personal estate, and Lewger denies that he joined in any such grant. Baltimore feels that the injustice shown him is aggravated by the rejection of the payment of the customs

[1] Strong, Babylon's Fall.
[2] 1 Md. Arch., Ass., 264.

due him by act of January, 1646/7, for better enabling him to defend the Province, which grant of customs was doubtless a powerful reason for his upholding the validity of the Assembly which granted it. If Leonard Calvert disposed of his brother's personal estate, he must have done so in confidence of gaining a return from these customs, but after his death the customs grant was taken away. The Assembly of 1649 had expressed the wonder that Baltimore should deprive of their just dues those who had done good service in the recovery of the Province, and he now replies that in the sixteen laws he had especially provided that such persons be paid by an equal assessment on all the inhabitants, "which is the justest and usual way in all civil kingdoms and commonwealths for defraying of public charges." The prince of a state should not bear the charge of a war from his own private fortunes, and in all countries, when a tax is laid and soldiers or officers have an estate, they pay their proportionable part of the tax. Baltimore is certain that many in Maryland have deserved well of him and he will not be unmindful of them, but he states that men have often by some actions deserved very well of others, but afterwards by other actions have "quite drowned the merit" of the former ones. In case the sixteen laws are passed and sixteen cows and a bull are delivered to the commissioners of the treasury for Baltimore's use[1] according to the Act of 1649, the Proprietary states that he will allow half of the customs due him for tobacco laden on any Dutch ship toward the satisfying of just claims touching the recovery of the Province. William Thomson, the only Roman Catholic who took Ingle's oath against Baltimore, and who gave a third of his cattle to the rebels, is forgiven, as the Assembly had asked. Stone is directed to investigate whether Abraham Janson, a Dutchman, had exported tobacco without paying duty. Cattle without known owners must be delivered to Baltimore's agents, as they come under his right to waifs and strays. With pious expressions of hope

[1] 1 Md. Arch., Ass., 252.

for future unity and prosperity of the Province, the letter closes.

After the letter was read and the Assembly was organized, the burgesses asked leave to debate and advise concerning the sixteen laws, and as this consultation would require a long time, the Governor adjourned the Upper House until Wednesday, April 10.[1] On Monday, April 8, after expelling Matthews, the Lower House read the sixteen laws, and on Tuesday the act of recognition and the act of oblivion were discussed.[2] There was evidently some objection to the former law, and the Speaker ordered that an act should be drawn up for the rights of the Lord Proprietor and the people's liberties. On Wednesday the Lower House presented to the upper one a report, now lost, upon the sixteen laws, with their petition before referred to.

On Thursday Mr. Robert Clarke[3] was added to the Upper House, and there was some discussion as to whether the act of recognition could not be passed as a temporary law with right to repeal, if it infringed men's liberties or consciences. A joint committee of the two houses was then appointed for perusal of the sixteen laws, that there might be "more speedy dispatch." The committee consisted of two Councilors and six burgesses,[4] and while it met the Assembly adjourned. On Wednesday, April 17, the "Committee delivered in their certificate," which is now lost, and which was sent to the Lower House. On the same day a remarkable document was prepared.[5] It is not entered in the Provincial records and is known only because copied in Langford's "Refutation of Babylon's Fall," a pamphlet of which we shall speak later. The document is signed by Stone,

[1] 1 Md. Arch., Ass., 274.
[2] 1 Md. Arch., Ass., 275.
[3] 1 Md. Arch., Ass., 276. The Governor remitted all the fines of the Assembly. Clarke was put on the Committee of Laws. On April 20 at his own request he was discharged from sitting further, 1 Md. Arch., Ass., 279.
[4] Vaughan ranked as a burgess. The Councilors were one Protestant and one Roman Catholic and the burgesses five Protestants and one Roman Catholic.
[5] Davis, 71.

Price, Vaughan, and Hatton[1] of the Council, eight Protestant burgesses and forty-three other Protestants, which last number is headed by the name of William Durand and includes residents both of St. Mary's and of Providence.[2] The pith of the declaration is a statement "to all persons whom it may concern, that, according to an act of assembly here, and several strict injunctions and declarations by his . . . lordship . . . , we do here enjoy all fitting and convenient freedom and liberty in the exercise of our religion under his lordship's government; and that none of us are in any ways troubled or molested, for or by reason thereof."

On the eighteenth the committee's report was referred back to it,[3] to see if they wished to make alteration or addition, and on Friday the nineteenth the report was again discussed by the Lower House, which decided not to accept the act requiring that all persons accounting do so under oath, but rather to draw up a new act imposing a penalty upon false accounts.[4] The law as drawn up by the Lower House was assented to by the upper one, and finally met with Baltimore's approval, as it required those entrusted with personal property for the use of the Proprietary to account for it under oath, while the oath was not required of others making account.

In addition to the sixteen laws, certain other bills, orders, and petitions were before the Assembly, and on Monday, April 22, Stone appointed the Speaker, Vaughan, and four other burgesses[5] as a committee to examine these matters and report on Wednesday. The committee, under Fenwick's chairmanship, met with two of the Councilors[6] on Tuesday and Wednesday and discussed a number of bills, some of which were afterwards enacted, while others were not. On Wednesday afternoon the committee re-

[1] Thomas Greene was away, 1 Md. Arch., Ass., 277.
[2] Bozman, II, 672. Neither Fuller's nor Bennett's name is there.
[3] 1 Md. Arch., Ass., 278.
[4] 1 Md. Arch., Ass., 279, 306.
[5] 1 Md. Arch., Ass., 279; two Roman Catholics and two Protestants.
[6] 1 Md. Arch., Ass., 280; Greene and Price.

ported to a joint session of the two houses, and Hatton was directed to write to Baltimore informing him as to what was done with regard to his sixteen laws. This letter was read before a joint session of the two houses of the Assembly on the next day, and was signed by the Governor, three Councilors, and all the burgesses except four, all of whom were Roman Catholics and one of whom was probably absent.[1] On the same day Stone appointed two Councilors and six burgesses, of whom one was the only Roman Catholic who signed the letter and two others were the representatives of Providence, to review the laws of 1649, especially that one concerning the provision of cattle for Baltimore, and any other acts and orders, drawn but not read.[2] Captain John Price was chairman of the committee, which met on Friday, and besides considering several proposed acts, reported that all the laws of 1649 should be continued, except that the prohibition of the export from the Province of cattle formerly belonging to the Proprietary should be continued for another year.[3] The members were becoming weary of the session and hastened through the consideration of the committee's report[4] on Saturday and Monday, adopting in joint session of the two houses most of the recommendations, though one act, "providing punishment for capital offenses," was ordered to be set aside till next Assembly, as there was a tie vote in the Lower House upon it.[5]

When the adjournment of the session was discussed, some one said that those attending the Assembly ought to be protected from arrest, but the burgesses replied that they desired no protection, and preferred to be liable to all suits.[6] The Governor finally prorogued the legislature to January 10, 1651.

[1] Greene did not sign. Possibly two were absent, as John Medley, who did not sign, was permitted on that day to go home on account of his wife's illness.

[2] 1 Md. Arch., Ass., 281. John Halfhead's petition was referred to the Provincial Court, as neither party was present.

[3] 1 Md. Arch., Ass., 295, 253. The three enactments considered in this statute were called orders, not acts, in 1649.

[4] 1 Md. Arch., Ass., 282, 285. Fenwick alone opposed this speed.

[5] 1 Md. Arch., Ass., 283.

[6] 1 Md. Arch., Ass., 284.

Before adjournment the Committee on Laws also brought[1] in "the Country's charges" and those of the burgesses to be laid on each county or hundred particularly for its own representatives. As they could not make a true estimate of the population in the several counties, the levy of the assessment was postponed until October,[2] when Stone should summon three or four of the Puritans, one or two from Kent and one or two out of each hundred in St. Mary's. These deputies, chosen by the freemen of these counties and hundreds, should assemble on October 10 at St. Mary's under the Governor's presidency[3] and make assessment of the levy on the taxable persons per poll. The Governor was allowed six men and each Councilor three men free of taxes. These men must be the "own proper servants" or live in the house of the officer who claimed the exemption.[4]

The acts of this Assembly are of four classes: first, nine laws introduced by the Assembly and called acts; second, eleven laws, called orders, of a more temporary character; third, two confirmatory laws; and fourth, ten laws called acts, which are probably among the sixteen laws. In the first class are found the act for the organization of the Assembly, which we have already discussed; provisions for the punishment of adultery, fornication, false witness, swearing on secular days,[5] drunkenness, striking an officer of the law, or any one in the presence of a court; provisions for fixing the Secretary's and sheriff's fees[6] and the salary of the

[1] 1 Md. Arch., Ass., 282. William Lewis was allowed four hundred pounds of tobacco for bringing down the Indians last year. "Francis Brooke was not able through sickness to attend the house and drawing of his wine, the Committee think fit, not to provide for him at all," 1 Md. Arch., Ass., 284.

[2] 1 Md. Arch., Ass., 298.

[3] The Governor has a casting vote and must also assent to the determinations.

[4] 1 Md. Arch., Ass., 282.

[5] 1 Md. Arch., Ass., 286. Swearing on Sunday was forbidden by the act of 1649 concerning religion.

[6] 1 Md. Arch., Ass., 289. The sheriff's fees are continued as established by the Act of January, 1646/7; but I am inclined to think that the Assembly rather meant in making such confirmation to imply that Baltimore was wrong as to the legality of that Assembly session. In a later act of this session the fees are changed, p. 308.

muster master general.[1] In the same class is found "an act prohibiting all compliance with Capt. Wm. Claiborne in opposition to His Lordship's right and dominion over this Province."[2] The act recites the Privy Council proceedings of April 4, 1638, which confirmed Baltimore's title, and states that Claiborne now renews his claim in threatening letters to Stone, and "gives out in speeches that he purposeth ere long to make some attempt upon the Isle of Kent." Matters were in uncertain condition in England since the King's death, and Baltimore's arch-enemy would fish in the troubled waters. To prevent the success of his plans and to keep all the inhabitants of Maryland in their due obedience, the Assembly enacted a law that any resident of the Province who should assist Claiborne or any of his adherents in any enterprise against the Island or any other place within the Province should be punished by death and confiscation of all his Maryland property, both real and personal, to the use of the Proprietary.

The disturbed conditions of affairs in Maryland and in England had resulted in the neglect for a long time of the seating of land by divers persons who had taken it up, and in the desertion of plantations by others who had once seated them. These plantations were waste and uninhabited, but the owners kept their titles on foot, so that other persons could not take up the land. This was inconvenient to the Commonwealth[3] and a great injury to the Proprietary in the loss of rents and otherwise. To prevent this difficulty, the Assembly decreed[4] that plantations deserted for four years, unless owned by orphans under sixteen years of age, or claimed with payment of rents in arrears before March 25, 1651, might be regranted by the Proprietary. For the future a similar regrant of deserted plantations might be made when the rent should be three years in arrears.

[1] 1 Md. Arch., Ass., 292.
[2] 1 Md. Arch., Ass., 287; Bozman, II, 391.
[3] Bozman (II, 392) properly draws attention to the use of this word instead of Province.
[4] Fenwick voted against this law, 1 Md. Arch., Ass., 282, 288. Bozman, II, 392.

The Puritan immigration caused the Assembly to erect[1] that "part of the Province over against the Isle of Kent, formerly called Providence by the inhabitants, into a shire or county, by the name of Anne Arundel," the Lord Proprietary's wife, who had died in 1649. Other counties were laid out by the Proprietary in virtue of his Palatine jurisdiction. This is the only one formed before that loss of Baltimore's jurisdiction over the Province following upon the Revolution of 1689 which owes its existence to an act of the Assembly.

Another of these acts, caused by the murder by Indians, in a most barbarous and cruel manner, of two of the inhabitants of Kent and Anne Arundel Counties, prohibited any Indian from coming into these counties except to speak with the commander of the county upon some urgent occasion, when he was to give some known sign of his approach.[2] If this were done by the Indian, the inhabitants who met him must conduct him harmless to the commander. Any Indian coming otherwise might lawfully be killed by any inhabitant, and no one was allowed to harbor any Indian contrary to the direction of this act, which was to remain in force until repealed by the Governor's proclamation. This act was not the only result of the death of the two white men. One of the orders[3] provided for a march against the Indian tribes whose members were guilty of the murder, unless the murderers should be given up to the Provincial government.

Thomas Allen at his death[4] had left two children who had in some way been captured by Indians, and the estate was not sufficient to ransom them and pay all the debts.

[1] 1 Md. Arch., Ass., 292; Bozman, II, 393. Note that no boundaries are given the county. Randall, D. R. (A Puritan Colony, 22) thinks that the Puritans had determined to "found an independent community free from trials and conflicts attendant upon participation in the General Government of the Province."

[2] 1 Md. Arch., Ass., 291. Not over four Indians may come together. Bozman, II, 394. As a result of this law, by proclamation dated April 29, 1650, Stone revoked all licenses to Indians and foreigners to kill deer, 3 Md. Arch., Coun., 255.

[3] 1 Md. Arch., Ass., 294; Bozman, II, 395.

[4] 1 Md. Arch., Ass., 297; Bozman, II, 396; 4 Md. Arch., Prov. Ct., 403, 496, 527, 540; 10 Md. Arch., Prov. Ct., 50.

But the public charge this year would probably be "very great and burthensome," so the Assembly, with petty meanness, ordered that the children should be bound out as servants until they should arrive at the age of twenty-one to any one approved of by the Provincial Court who would pay the cost of their redemption. At the expiration of the term of service each child must receive a cow and a cow calf, three barrels of corn, and necessary clothing. If any person approved by the Provincial Court would deal more "favorably and charitably" with the children, taking them bound for a shorter time, or letting them go free, he should be first preferred.

The other orders confirm orders of the Assembly of 1649; provide for the assessment of the levy; prohibit engrossing of goods or servants;[1] direct the recording of the marks of cattle and hogs before Michaelmas;[2] forbid foreigners, "either English or Indian," to hunt in the Province without special license, on pain of forfeiture of equipment and imprisonment; allow Stone half a bushel of corn from every taxable person within St. Mary's and Kent Counties and from every freeman in Anne Arundel;[3] forbid Mr. Cuthbert Fenwick from transporting from the Province a horse which he has bought, which Mr. Thomas Thornborough claims was given him by Leonard Calvert, until the next General Assembly determined to whom the horse belongs.[4] They direct that "all maimed, lame, or blind persons within St. Mary's County" who cannot "get their living by working" shall be maintained as the Governor and Council think fit by an equal assessment on such inhabitants of the county as "shall not make a free and willing contribution out of their charitable dispositions."[5]

Still another order deals with the "reedifying of the fort of St. Inigoes,"[6] lest accidents happen, "much to the in-

[1] 1 Md. Arch., Ass., 294.
[2] 1 Md. Arch., Ass., 295.
[3] 1 Md. Arch., Ass., 295; 3 Md. Arch., Coun., 261, 267. Stone issued proclamations for the payment of this tax.
[4] 1 Md. Arch., Ass., 223, 280, 296; 4 Md. Arch., Prov. Ct., 347.
[5] 1 Md. Arch., Ass., 296. This begins Maryland's poor laws.
[6] 1 Md. Arch., Ass., 293.

dignity of the Lord Proprietary" and "abuse of the Inhabitants, through the insolency and pride of some ill-minded people trading or trafficking here, if no place of force be maintained . . . to command their ships." A salary is provided for the gunner and a tax of powder, shot, and "match" for the use of the fort is laid on each ship trading in the Province. All vessels without special license are commanded, "both at their coming in and at their departure hence," to "ride 2 whole tides before and within command of the said fort and take discharge thence." The Governor may press six men and a captain, with necessary victuals and ammunition for a garrison, during the time that shipping are riding at anchor in the Potomac or St. George's River, and defray the charge of this garrison "by an equal assessment on all the inhabitants of this Province." For the repairing of the fort in the next autumn every five inhabitants of the Province must "find and maintain one man."

The third class of enactments consists of two signed statements of those persons who were members of this Assembly and had also served in those of 1647 and 1649 as to their understanding of the meaning of two acts passed in those Assemblies, which interpretations are adopted by this Assembly as law.[1]

The fourth class of laws is most important, containing ten acts, all but one of which, fixing the sheriff's fees,[2] are pretty clearly among the sixteen laws sent over by Baltimore. We have already examined the one concerning accounting and seen that the Assembly dared to amend it. We shall see that they exercised like daring with others of the laws, the first of which is "an act of recognition of the lawful and undoubted right and title" of Baltimore as "absolute Lord and Proprietary." I must own that I cannot see why Calvert insisted upon this act, which gave him noth-

[1] 1 Md. Arch., Ass., 299. See p. 321, where on April 22 five members of the Assembly of 1647 complain in a letter to Baltimore of Greene's conduct at that Assembly.
[2] 1 Md. Arch., Ass., 308.

ing which he did not already derive from his charter.[1] The act is couched in most fulsome terms of gratitude and loyalty and, in view of subsequent events, of hypocrisy. The term "absolute Lord" is no longer a stumbling-block; the legislators pledge themselves to "maintain, uphold, and defend" Baltimore "for ever, until the last drop of our blood be spent," "in all the royal rights, jurisdictions, authorities, and preeminences" given him by the charter, so far as these do not "prejudice the just and lawful liberties, or privileges, of the free born subjects of the Kingdom of England."[2] The act also refers to the "unspeakable benefits we have received by your Lordship's vigilancy" and to the "inestimable blessings" which Baltimore "poured on this Province, in planting Christianity among a people that know not God."

The next of these acts is one of oblivion, which pardons any of those in rebellion between February 15, 1644/5, and August 5, 1646, except Richard Ingle and John Durford, mariners, and such Kentishmen as Leonard Calvert had not pardoned. All contracts concerning plundered goods or cattle, to which another than the true owner was a party, shall be void at law. To preserve peace, all upbraiding of one man by another for acts done during this rebellion is forbidden.[3]

The next act is one "against raising of money within the said Province without Consent of the Assembly,"[4] and the fact that we can place such a law among those drafted for the Proprietary and sent to America by him is surely a fine proof of his wisdom and discretion as a ruler. The act recites that "the strength of the Lord Proprietary of this Province doth consist in the love and affection of his people, on which he doth resolve to rely upon all occasions for his

[1] 1 Md. Arch., Ass., 299. Bozman (II, 398) thinks that the adulation of Baltimore in the act shows that it was drafted in the Province. I cannot agree with him in this opinion.

[2] The word "Kingdom," doubtless in the original draft of 1648, escaped the Assembly's attention.

[3] 1 Md. Arch., Ass., 301; Bozman, II, 406.

[4] 1 Md. Arch., Ass., 302; Bozman, II, 400.

supplies," and, therefore, he decrees "that no subsidies, aid, customs, taxes, or impositions shall hereafter be laid" upon the freemen of Maryland, or upon their personal property, without the consent of the major part of the freemen, or their deputies, declared in a General Assembly. Bozman clearly points out that the attempt of certain lawyers, at the commencement of the American revolution, to claim that this act had reference to parliamentary taxation was a mistaken one. Neither Baltimore nor the Provincial Assembly could speak on this point. The act was sent over by the Proprietary "to conciliate the good will of his colonists and to give them assurances that he meant not, for the future, to exercise even the semblance of arbitrary power, especially in taxation."

The next of the sixteen laws[1] is one "concerning the levying of war within this province," and it was referred to in Baltimore's letter of 1649. It decrees that the freemen need not aid, against their wishes, in the prosecution of any war made by the Proprietary or his Governor outside the limits of Maryland, unless the consent of the General Assembly has been obtained. Further, it limits the exercise of martial law to the time of war and the precincts of camp or garrison, and decrees that the charges arising from defence of the Province from invasion or from domestic insurrection shall be defrayed by an equal assessment upon the persons and estates of the inhabitants of Maryland.[2]

This law is not unrelated to the one "concerning trade with the Indians."[3] In contrast to the early monopoly of the trade in "beaver and other commodities," this trade is now thrown open to "every inhabitant of this Province," who may not only trade within Maryland, but also may pass on any river to trade with Indians without the Province, and may export from Maryland, without especial leave from the Governor, any commodity bought from the Indians except

[1] 1 Md. Arch., Ass., 302; Bozman, II, 402.
[2] This is to prevent another controversy like that over Leonard Calvert's acts in 1646.
[3] Bozman, II, 397; 1 Md. Arch., Ass., 307.

corn, paying a tenth in weight or value of all beaver to the Proprietor as customs duty. No such trader, however, was allowed to sell arms or ammunition to the Indians; nor should traders give the Indians just cause of offence, "whereby the public peace or safety of this Province may be endangered by any war;" nor enhance the price of corn, to the prejudice of the people; nor "go forth upon any such trade too weak in strength," whereby the Indians may be "emboldened to destroy them, or do them mischief." To prevent these mischances, persons desiring to enter the Indian trade must take out licenses from the Governor, which licenses he may not deny if the applicant gives reasonable security that he will comply with the above mentioned provisoes. Persons who are not inhabitants of Maryland, yet trade with the Indians therein without license under the great seal, shall have all their goods confiscated.

Two other acts forbid any one without special warrant from Baltimore to buy any ordnance, ammunition, cattle, servants, or goods belonging to the Proprietary,[1] and direct that debts due the Proprietary be paid before any other debts.[2]

We have left for the last the "act for taking of an oath of fidelity to the Lord Proprietary."[3] A similar oath with the words "royal jurisdiction" had been used in 1643 and probably also in more recent years, but the oath had been reworded and sent out by Baltimore from Bath on June 20, 1648, with the sixteen laws. All persons residing within the Province, or having an estate therein and coming themselves to Maryland, must take the oath according to the law, on pain of banishment for the first refusal and of fine and imprisonment for a second refusal. Though the members of the legislature had accepted the words "absolute" and "royal" in the act of recognition, they reject them in the oath, and merely provide that the oath-taker swear to be

[1] 1 Md. Arch., Ass., 303.
[2] 1 Md. Arch., Ass., 304.
[3] 1 Md. Arch., Ass., 304, 320; 5 Md. Arch., Coun., 149; Bozman, II, 403. Cf. 3 Md. Arch., Coun., 145, 193, 196. The Lord Baltamore's printed Case Uncased and Answered, 25.

faithful to Calvert as "Lord Proprietary" and to maintain his jurisdiction. They also add a clause that their faithfulness shall not be "any ways understood to infringe, or prejudice, liberty of conscience in point of religion," and insert the words "just and lawful" before the word "right" in the promise to defend Baltimore's interests.[1] These variations weaken the force of the oath, yet they leave it largely as it came from Baltimore's hands, so that we find an Assembly composed largely of Protestants and containing prominent members from the Puritan settlement at Providence adopting a most adulatory act of recognition, containing the words "absolute lord" and "royal jurisdiction," and agreeing that those who would not take an oath of fealty to the Proprietary shall be banished from Maryland.[2] It accords with the general mildness of Maryland's government that we learn from a statement made in 1655 that "no person within the Province was ever yet banished or fined for refusal" of the oath, only no land was granted to any one who would not take it.[3]

The laws, as passed in 1649 and 1650, were sent to Baltimore with the Assembly's letter, and on August 6, 1650, Cecilius makes gracious reply.[4] He has selected eighteen of the laws of these sessions, adding two to the sixteen previously sent by him, and had them engrossed, signed by himself, and sealed with his great seal. These laws are to remain permanently without change, except such as may be made with Baltimore's personal consent. To other temporary laws the Governors of the Province may assent, to

[1] Bozman (II, 404) calls our attention to the fact that Leonard Strong in Babylon's Fall wilfully mixes the oath of fidelity and the officer's oath.

[2] Langford says that the Puritans knew of the necessity to take an oath before they came to Maryland.

[3] Langford, A Just and Cleere Refutation. The oath of Governor and Councilor was even more optional. Langford says that the Puritans made no objection to the oath till they were much refreshed in the Province, and Browne (George Calvert and Cecilius Calvert, Barons Baltimore of Baltimore, 139) remarks that their alleging scruples of conscience concerning this oath seems "over niceness, since no scruple apparently intervened to prevent their breaking it when taken." See also Hammond, Leah and Rachel.

[4] 1 Md. Arch., Ass., 321, 386.

continue in force for a limited time unless the Proprietary sooner declare his disassent, and any law, except these eighteen permanent ones and such others as may in the future be added to that class, may be repealed by the two houses of the General Assembly with the Governor's consent. Thus there was created something very like a written constitution for the Province, in addition to that furnished in the charter.

III. Proprietor and Colonists, 1650–1.

On the same day on which he approved the acts Cecilius sent a long letter[1] to Stone, complaining of Greene's conduct while acting as Governor in the preceding autumn and stating that the letter of the Assemblymen, dated April 22, shows that in 1647 Greene "preferred his own ends of lucre and gain before our honor or profit."[2] For these reasons Greene's acts as Governor are to be null and void, unless confirmed by Stone, and Greene himself is to be removed from being a member of the "Council of State, Commissioner of our Treasury," and from all his other offices. Greene had been further accused to Baltimore of having made use of his privilege as a Councilor to protect himself from paying his debts. To prevent such a scandal hereafter, Baltimore decreed that every officer may be proceeded against "for any debt, trespass, crime, or misdemeanor," as was the case in Virginia. Stone was empowered to appoint some fitting person as receiver in Greene's room, for the time being, and to name as Councilors two able persons, "who are lately come, or may perhaps shortly come" to Maryland, and who "may be fit to be of our Council of State." Stone's appointees were to hold office until the Proprietary should "confirm or discharge them," and they must take the Councilor's oath. Stone was also empowered to pardon any criminal except those exempted by Baltimore's declaration of August 26, 1649, provided

[1] 1 Md. Arch., Ass., 313.
[2] 1 Md. Arch., Ass., 321; see 221, 232, 238.

those pardoned took the oath of fidelity, as passed by the legislature of 1650. This amended oath the Proprietary accepts and permits to be taken by those desiring warrants for tracts of land.

Baltimore went on to reply to the address sent him by the Assembly in April. He accepted the offer of sixteen cows and a bull, and stated that this acceptance shows "how great a desire" he had to "comply with them in any thing we can, though with much prejudice to ourself."

John Jarboe had "behaved himself unmannerly and contemptuously" toward Stone, and Baltimore directed his lieutenant to "cause such punishment to be inflicted on him as his fault deserveth"[1] unless he both made "public acknowledgment of his fault in open court," craved Stone's pardon, and promised better conduct in the future.

John Metcalf and William Lewis had both asked to be made sheriff of St. Mary's County, and as both were good men, Stone might appoint either one to that office. The Proprietor suggested that the other one be made receiver general in Greene's stead, if he were fit for the office. Lewis knew the Indian tongue, and Baltimore considered him a suitable person to be appointed interpreter general, if the Assembly could be induced to make him a reasonable allowance for that office. Such an allowance Baltimore would esteem a "particular respect shewed" him.

In his desire to increase the population of Maryland, Baltimore appointed Robert Brooke[2] as a member of the "Privy Council of State within our said Province of Maryland" by commission dated September 20, 1649. This honor, as well as the position of justice of the peace, was conferred upon Brooke because he "doth, this next sum-

[1] In the past Jarboe had merited well of Cecilius and of his "dear brother deceased."

[2] 3 Md. Arch., Coun., 240; Bozman, II, 376. This commission shows that the laying out of counties was deemed a matter within the executive powers of the royal jurisdiction of the Count Palatine of the Province. Bozman (II, 377) thinks that Brooke was a Puritan, as is shown by the favor the Parliamentary Commissioners showed him in 1652.

mer's expedition, intend to transport himself, his family and a great number of other persons and good store of provision and ammunition" into Maryland[1] to "settle a considerable plantation." A further honor was the appointment of Brooke as commander of one whole county, to be "newly set out round about and next adjoining" his settlement, and to contain as many square miles as are usually allotted counties in Maryland and Virginia.[2] Within the county Brooke could appoint six Commissioners having the same powers as those of Kent, could hold court and hear any criminal cases not extending to life or member, as well as civil causes not exceeding £10 sterling in damages or demands. Furthermore, he could appoint the sheriff and other necessary officers for the execution of justice, should himself be commander of the county militia, and was given the right of fortifying places for defence.

Nine days later the Proprietary appointed,[3] as Privy Councilor and justice of the peace, William Eltonhead, whose career in the Province was to have so tragic an end, and on March 4, 1649/50, he added a third member to the Council in the person of William Mitchell of Chichester, in Sussex, who proved to be a man of most unsavory character.[4] Mitchell, like Brooke, planned in the next summer to transport himself and family and divers others, artificers, workmen, and "other very useful persons, in all to the number of 20 persons at the least," and, after his plantation was established, he promised to provide fresh supplies of men, "as occasion shall serve."[5]

[1] A list of the persons who came with Brooke is found in Davis, 74.

[2] 3 Md. Arch., Coun., 238. The grant was not to conflict with any existing county. This is an amusing provision, as no Maryland county at the time had boundaries. On the Brooke family see Thomas, Chronicles of Colonial Maryland, 302, and the article by Dr. Christopher Johnston in Maryland Historical Magazine, I, 66, 181, 284, 376.

[3] 3 Md. Arch., Coun., 242.

[4] 3 Md. Arch., Coun., 250.

[5] Mitchell arrived in Maryland prior to December 10 (10 Md. Arch., Prov. Ct., 68), but was not sworn in until January 8, 1650/1 (10 Md. Arch., Prov. Ct., 52).

Brooke arrived[1] in Maryland June 30, 1650, with wife, ten children, eight of whom were boys, twenty-one men-servants and seven women-servants, forty persons in all. On July 22 Brooke and his two elder sons, probably the only ones of full age, took the oath of fidelity, and on the same day Brooke and Eltonhead took the oath of Councilors. Late in the autumn, on November 21, the Governor and Council issued a proclamation constituting a territory south of the Patuxent River into Charles County and appointed Brooke its commander. The county was shortlived, and the order for its establishment was revoked by the Governor's order on July 3, 1654.[2]

When Baltimore made his arrangements with Captain Mitchell, he gave him a special warrant,[3] dated January 18, 1649/50, for a manor of three thousand acres, with the provision that one hundred acres should be deducted for each person wanting to make the number of those whom he transported thirty. Mitchell did not leave England until the autumn of 1650, but news had already been transmitted to Baltimore before August, 1651, that a mistake had been made in appointing Mitchell a Councilor, to which appointment the Proprietary was induced by Mitchell's "ability of understanding." Cecilius hoped that he would have been "a good assistance . . . for the better conduct of our government . . . and that, according to his serious professions to us, he would have, not only by his advice but also by his example of life, conduced much to the advancement of that Province." These hopes were vain. He fomented divisions. After his wife died on the voyage from England, he carried on adulterous relations with women whom he brought to Maryland with him, and in public discourse he profanely said that he was of no religion.[4] He was therefore removed

[1] 3 Md. Arch., Coun., 256.
[2] 3 Md. Arch., Coun., 260; Bozman, II, 377. The name was probably taken from the Proprietary's heir.
[3] Bozman, II, 424; 1 Md. Arch., Ass., 333; Kilty, 79. For various land entries, assignments, caveats, warrants, etc., of this period see Kilty, 86, 87, 89, 211, 213, 215, 216.
[4] See 10 Md. Arch., Prov. Ct., 173.

from his Councilorship, and Stone was ordered not to permit him to act in that station should he come again to the Province, whence he had returned to England.

On April 4, 1650, Mitchell executed a paper[1] stating that although he sent two of his children and his servants to Maryland, he intended to remain in England for a time. He empowered four of his servants[2] to manage all of his men-servants and boys, except his children and his cook, to use his iron ware and other truck, except the household stuff, which together with the ordering of the women-servants was left in the control of Anne Boulton, a servant. Mitchell planned to take with him a daughter of one William Smith as a servant, and offered to transport Smith to Maryland and then send him back to England without cost, that he might "be an eye witness how your child is disposed of."[3] Mitchell also recommended that Smith bestow household stuff upon his daughter, which Mitchell agreed not to mix with his own. Smith agreed to this and came with Mitchell, bringing some household stuff with him. When he arrived in the Province, however, he found[4] that the scoundrel refused to allow him "competent maintenance" there, to "pay for his passage for England," or to give him back his goods. He was just sixty years old, "an aged man and not

[1] 10 Md. Arch., Prov. Ct., 44.

[2] 10 Md. Arch., Prov. Ct., 67. When Mitchell arrived in the Province in the early winter he found that Hatton had boarded some of the servants for a while and he objected to Hatton's charges. The parties appointed arbitrators, and the amount these found due was awarded by the court to Hatton. On December 26, 1650 (10 Md. Arch., Prov. Ct., 120, 145), Mitchell bought three steers and a number of hogs, in return for which he agreed to give Kadger, the seller, the use of one of his servants until Mitchell's next arrival from England into the Province, when he would give Kadger the choice of any three servants whom Mitchell should import, tradesmen excepted. If he imported none, Kadger might pick any three of Mitchell's servants then in Maryland. Mitchell tried to evade the fulfilment of this contract and brought no men from England, but on March 22, 1651/2, the court decreed specific performance of the contract by giving Kadger three of Mitchell's servants in the Province. Brooke also sued him for goods and clothing furnished his people, 10 Md. Arch., Prov. Ct., 250, 257.

[3] 10 Md. Arch., Prov. Ct., 49.

[4] 10 Md. Arch., Prov. Ct., 78.

able, by his labors, to maintain himself." That he should not "perish in these foreign parts" he sued Mitchell, in June, 1651. Mitchell, who had not sat in the court since February, was absent in England, and Fenwick, who represented him, obtained a postponement of the case until January, 1651/2. Then the case was further postponed, upon Fenwick's agreeing to furnish Smith with a bed, of which he was in "extreme want."[1] In April, 1652, Mitchell finally appeared[2] in answer to Smith's suit, and declared that Hatton knew that Smith had agreed to be his servant in Maryland. Hatton was away on that day, but upon his return on the morrow he declared, "I know nothing to Capt. Mitchell's advantage." Mitchell was absent, but the court, in just indignation, declared that Mitchell's appearance on the preceding day was sufficient, as this is a "Court of Equity as well as Law," and condemned him to pay all that was asked and the costs of the suit brought by this old man, "seduced from his country, wife, and children by the fair and false promises" of Mitchell.

At the time Smith brought the suit, Mrs. Susan Warren, alias Williams,[3] Smith's daughter, who was a widow, confessed that she was with child by Mitchell, and the court ordered Fenwick to provide for her.[4] A charge was also made that Mitchell had endeavored to procure an abortion,[5] and evidence was given that Mitchell and the woman had lived in adulterous relations in Maryland.[6] In August she gave birth to a dead child.[7]

In April, 1652, Mrs. Warren petitioned that she might be set free from her service to Mitchell, alleging that he had received money from her to pay her passage.[8] In June

[1] 10 Md. Arch., Prov. Ct., 36.
[2] 10 Md. Arch., Prov. Ct., 164, 178.
[3] 10 Md. Arch., Prov. Ct., 174.
[4] 10 Md. Arch., Prov. Ct., 80.
[5] 10 Md. Arch., Prov. Ct., 81, 176, 177.
[6] 10 Md. Arch., Prov. Ct., 149.
[7] 10 Md. Arch., Prov. Ct., 171, 177. Mitchell's wife came with him to Maryland also, dying on the voyage, and there were dark rumors that he had poisoned her, 10 Md. Arch., Prov. Ct., 175, 177, 183.
[8] 10 Md. Arch., Prov. Ct., 161, 170, 178, 185, 259.

she was freed, and Mitchell was ordered to pay all the costs of the suit and of her imprisonment while she awaited trial. There was "much juggling and baseness in the whole business," but the court was satisfied that she was no servant.

On Mitchell's return to the Province, on April 10, 1652, in the presence of Rev. Mr. Wilkinson, an Anglican clergyman, Mitchell, in an informal way, took as his wife one Joan Toast, a woman as godless as himself.[1]

When all these things were alleged against[2] him in June, 1652, Mitchell was committed to the common jail, charged with atheism, adultery, murder, abortion, and fornication, and Hatton prosecuted the case as State's Attorney.[3] A jury was sworn and brought in an indictment against Mitchell. On the next day Mrs. Warren was brought in, and Hatton accused her of adultery and the use of profane expressions. She pleaded guilty, and was punished by being "whipped with 39 lashes upon her bare back." Mitchell asked for no further jury, but for a court trial, and was ordered to pay five thousand pounds of tobacco and cask, to give bond for good behavior, to marry or leave his pretended wife, and to pay costs.[4]

On November 23, 1652, Smith sued[5] Mitchell for certain goods shipped from England upon his account, which goods Mitchell denied to have been Smith's. The case was postponed until January, when several of Mitchell's servants testified that Smith had come as a servant and that any goods brought over were Mitchell's. The case was again postponed until April, when the court decided to refer the whole matter to the next Assembly, and we hear no more of it.[6]

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[1] 10 Md. Arch., Prov. Ct., 173.
[2] 10 Md. Arch., Prov. Ct., 182.
[3] 10 Md. Arch., Prov. Ct., 182. Mitchell drew up a petition for a speedy trial, which he intended to send to the Assembly, had it gone on.
[4] 10 Md. Arch., Prov. Ct., 184. Part of the fine was remitted.
[5] 10 Md. Arch., Prov. Ct., 202, 225, 228, 229.
[6] 10 Md. Arch., Prov. Ct., 251. In open court Smith taxed Price, one of the Council, with having said that the case betwixt Smith and Mitchell should never have an end, and then he begged Price's

Mitchell, in March, 1652/3, sued Nicholas Gwyther, sheriff of St. Mary's County, for serving a writ of execution on his estate granted by one who had no right to grant it and before a former execution made out against his person was duly returned,[1] for administering an oath to the appraisers on the execution, which he had no power to do, and for taking Mitchell's waistcoat, which was not valued. The sheriff answered that he had served an execution, granted according to the usual manner by Lieutenant Richard Banks, one of the Council, and that he had taken the waistcoat, together with one of Mitchell's children, out of charity, as Mitchell had fled the Province. Gwyther had been at some charge for the child's clothes above the small value of the waistcoat. Four members of the Council found no cause to censure the sheriff, and held the complaint to be "troublesome, vexatious, and impertinent," but the Governor was not satisfied and "respited the business."

Still another instance of Mitchell's duplicity was seen in the case which Francis Brooke brought against him.[2] Mitchell hired in England for fixed wages one Anne Boulton to go with him as governess of his children, and then sold her as an indentured servant to Brooke for two cows, but refused to deliver her two trunks containing her goods, to account for her wages, or to pay for some cloth he had taken from her. Brooke married her and they brought suit in June, 1653. Mitchell was out of the Province and the case was postponed until his return. In May, 1654, the case was finally brought to trial, Mrs. Brooke having died in the meantime, and the court gave full redress to Brooke with the court charges. Mitchell succeeded in securing a postponement of the judgment by suing out a writ of error on March 20, 1655, but the judgment was finally satisfied in 1656.

pardon. In June (10 Md. Arch., Prov. Ct., 273) Mrs. Warren, as her father's representative, was allowed a claim against Mitchell's estate. On May 31 Smith had given her a power of attorney (10 Md. Arch., Prov. Ct., 303).

[1] 10 Md. Arch., Prov. Ct., 256.

[2] 10 Md. Arch., Prov. Ct., 215, 268, 378, 389, 438.

Stone[1] was absent from Maryland between May 22 and June 25, 1650, but it is significant that he appointed Hatton and not Greene as his deputy. Hatton seems to have been in high favor.[2] In his letter to Stone of August 6, 1650, the Proprietary said that Hatton had not received proper remuneration, but had to neglect his private affairs for public business, and should therefore have two thousand pounds of tobacco and cask. If he is too busy as Secretary to act as Attorney General, Stone may appoint some one else to the latter office.[3] Hatton evidently wished to keep both offices, for on January 10, 1650/1, Stone directed that he receive an annual salary of one thousand pounds of tobacco and cask as Attorney General.

We noticed that the Assembly of 1650 constituted the new county of Anne Arundel out of the Puritan settlement of Providence. To organize this county,[4] Stone appointed, on July 30, 1650, Edward Lloyd as commander and the following Commissioners: James Homewood, Thomas Mears, George Puddington, Matthew Hawkins, James Merryman, and Henry Catlyn. Their civil jurisdiction as a county court was limited to £20 sterling. Stone, by separate proclamation dated the preceding day, authorized Lloyd to grant warrants for land to any adventurers according to the Conditions of Plantation. Both of these documents were issued at Providence,[5] whither Stone had come to organize the county, and his desire to do so, in person and on the spot, was doubtless responsible for the delay of three months in carrying out the act of the Assembly.

During the summer of 1650 several inhabitants of the

[1] 3 Md. Arch., Coun., 255. February 25, 1649/50. Stone had revoked the appointment of Richard Husbands, mariner, as Admiral of the Province, because of Husbands's gross miscarriages. It seems that on the previous day Husbands, while "somewhat in drink," had fallen into an altercation with the notorious John Dandy on his ship in the St. George's River, 3 Md. Arch., Coun., 249.

[2] 3 Md. Arch., Coun., 261.

[3] 1 Md. Arch., Ass., 319.

[4] 3 Md. Arch., Coun., 257; Bozman, II, 406.

[5] 3 Md. Arch., Coun., 257. On the same day Vaughan was given the same power for Kent, 3 Md. Arch., Coun., 256.

Province obtained warrants from Stone to employ Indians to kill deer with guns, under color of which warrants the St. Mary's County people became "very much pestered with great concourse of Indians of several nations, to the annoyance and terror of divers of the inhabitants there and excessive waste and destruction of the game of this Province and dispersing and scattering of the cattle and hogs of the inhabitants, to their great prejudice and detriment."[1] To prevent a continuance of this state of things, Stone revoked all his warrants by proclamation of November 20, 1650, and directed all who had delivered any guns to any Indians to take them back.[2]

In November the Governor by advice of the Council permitted[3] a shipmaster to carry to the Mattapany Indians, "who were gone to seat towards the head of Patuxent River," some of their corn which he had on board his vessel.

In the same month a petition signed by sixteen men and a woman[4] was sent from Kent, complaining that, since the troublous times some five years ago, cattle had run wild on the island, and therefore the people were losing the increase of their herds and their tame cattle were carried away and spoiled by wild bulls. They therefore asked that the wild cattle be rounded up and disposed of. Mrs. Margaret Brent came to court and claimed that she and her brother were interested in this matter, as many of the cattle were theirs. The Provincial Court directed her and any other claimants to prove their right in the Kent County court. The county

[1] 3 Md. Arch., Coun., 260; 10 Md. Arch., Prov. Ct., 52. On January 8, 1650/1, two guns were brought into court, taken from two Indians employed by two settlers "without warrant as was alleged."

[2] Doubtless, as Henry Stockbridge wrote ("The Archives of Maryland as Illustrating the Spirit of the Times of the Early Colonists," Maryland Historical Society, Fund Publication no. 22, p. 47), "The cattle of the colonists, unrestrained, drew no nice distinctions between the crops of their owners and those of the Indians, and their hogs running at large seem to have been a novel and attractive species of game for the Indians, who could not understand why they should not protect their own crops, and hunt all animals running in the woods, as for generations they had been accustomed to do."

[3] 10 Md. Arch., Prov. Ct., 45.

[4] 10 Md. Arch., Prov. Ct., 48.

court should certify its finding to the Provincial Court, which would distribute the cattle as it saw fit, unless the claimants could agree to a distribution among themselves. Care must be taken to guard Baltimore's interests. Calvert on April 19, 1647, had directed two of the Kentishmen to take into their custody all neat cattle on the island belonging to absent persons.[1]

On January 31, 1651/2, Stone issued a writ to the sheriff of St. Mary's stating that information had come that Mrs. Mary Brent had recently caused to be killed "divers unmarked bulls and other cattle" on the Isle of Kent without lawful warrant, to which cattle Baltimore had a claim.[2] Some of the meat had been brought to St. Mary's for sale and must be secured until Mrs. Brent should show her right to it.

On March 25 the Provincial Court met and depositions were read that five wild unmarked bulls and four marked ones, two of which may not have been hers, were killed by her[3] orders in the preceding June, and that four casks of salted beef, which now needed repacking to prevent it from spoiling, were transported across the Bay. Hatton, as Attorney General, conducted the case for the Proprietary, and stated that as Mrs. Brent's agent had refused to repack it, Hatton had superintended the task and sold some of the meat to the best advantage he could. Mrs. Brent came to defend her own cause, and claimed that all the cattle killed were of her brother's own stock. She asked a jury trial, but the "Governor and Council being taken off upon other public urgent occasions could not attend the further hearing of the cause," and respited it, directing Hatton to sell the rest of the meat and be accountable therefor. By the time the next court met in April, Captain Claiborne,[4] "a man

[1] 10 Md. Arch., Prov. Ct., 60.
[2] 10 Md. Arch., Prov. Ct., 149.
[3] A little while before she had killed one unmarked wild bull. She was stated to have said that "she had a desire to kill all the unmarked bulls upon the island, if that she could," 10 Md. Arch., Prov. Ct., 348.
[4] 10 Md. Arch., Prov. Ct., 164, see 186.

now in power here," had made claim that he had some interest in the Kentish wild cattle, and that "the business did concern the whole Commonwealth" and so was more proper for an Assembly, to which body it was accordingly referred, and we hear no more of it.

To the three Councilors he named in 1650 Baltimore added two more in 1651. The first, Major-General Edward Gibbons,[1] of New England, a man of "honor, worth, and abilities," was commissioned Councilor, justice of the peace, and admiral of the Province on January 20, 1650/1. Gibbons had come to New England with Wollaston's company in 1625, and had remained behind when they were driven out. He united himself with the Puritans of Salem in 1629, and had been commander of the forces of the United Colonies of New England against the Narragansett Indians in 1645. In 1650 he was chosen one of the Assistants in Massachusetts. It is not known why he removed to Maryland, but the commission is another proof of the Proprietary's desire at this time to cultivate the favor of the Puritan party. Gibbons came to St. Mary's County, and at his death there, in the latter part of the year 1655 or the early part of 1656, he left a widow, who assigned to Baltimore a windmill belonging to her husband, in satisfaction for a debt of £100 sterling.

The second Councilor,[2] commissioned on August 1, 1651, was Job Chandler, a kinsman of Stone and a brother of Richard Chandler, a London merchant. The appointment seems not to have been made because of Baltimore's knowledge of the appointee, but because of recommendations made by Stone and Richard Chandler. In addition to being made Councilor, Chandler was also given the position of receiver general.

The Assembly summoned for January 10, 1650/1, was

[1] 3 Md. Arch., Coun., 261; Bozman, II, 411. The Lord Baltimore's Case, in 1653, appeals to him as a witness for the Proprietary, and states that he was then in England.

[2] 3 Md. Arch., Coun., 263, 299. On Feb. 11, 1653/4, he took the oath of Councilor before Hatton. This was done, probably, because he had not previously taken oath to the Proprietary.

postponed until March 11, when the two houses assembled. Unfortunately the proceedings are lost. Only three acts were passed:[1] one revising the Secretary's and Clerk's fees, which fees Hatton again complained that he had great difficulty in recovering; another providing for a new table of fees for the Surveyor General,[2] and the third arranging for the raising of the levies for the current year in a similar way to that taken in the previous year.[3]

IV. The Proprietor's Instructions of 1651.

Bozman thinks that the Puritans refused or neglected to send any delegates to the Assembly,[4] and that this is probably the cause of the small amount of legislation at the session. Lloyd, the commander of the county, who should have been the returning officer, was doubtless asked so to act, and in reply sent a letter which greatly offended Baltimore,[5] as he showed in the long letter which he wrote Stone on August 26, 1651. Lloyd had written as spokesman "from some lately seated at Anne Arundel," and, as far as we can determine, refused to return burgesses, on the ground of "some reports in those parts of a dissolution or resignation" of Baltimore's patent, "which might perhaps make them doubtful what to do, till they had more certain intelligence" from England. Baltimore had induced their friends in England and particularly Mr. Harrison, their late pastor,[6] who had returned from America, to write to Maryland that the rumors were false, and he hoped that the Providence settlers would give "better satisfaction of their intention and integrity" toward him, "not only by conforming themselves with the rest of the inhabitants to the general government of that Province under which they did voluntarily put themselves, but also by concurring in all reasonable

[1] 1 Md. Arch., Ass., 311. See Kilty, 84.
[2] 1 Md. Arch., Ass., 312.
[3] Charles County is to have one or two representatives, 1 Md. Arch., Ass., 313.
[4] Bozman, II, 413.
[5] 1 Md. Arch., Ass., 327.
[6] Bozman, II, 416.

things with us for the public peace and happiness of that Province, as well as for the firm establishment and preservation" of the Proprietary's rights. Their own burgesses had consented to the laws of 1650, which were fundamental for the Province. "Government divided in itself must needs bring confusion," and if the Puritans will not yield to admonition, Baltimore must use his "authority, with the assistance of well affected persons, to compel such factious and turbulent spirits to a better compliance with the lawful government." Furthermore, if the English inhabitants of any part of Maryland refuse to send burgesses to any future Assembly, the other members are directed to proceed with the business of the session in spite of the refusal, and to fine those "refusers or neglecters according to their demerits." If they persist in their refusal or neglect after the Governor admonish them, they shall be declared enemies and rebels.

The reports that Baltimore's charter was shortly to be taken away by the Commonwealth, or that Davenant had been appointed Governor of Maryland by the King, may have reached Virginia and have been the cause of Sir William Berkeley's venturing to authorize Edmund Scarborough of Accomac to seat Palmer's Island in the mouth of the Susquehanna and to trade with the Indians in and through Maryland.[1] Baltimore could not understand "so strange an usurpation" of his rights, and directed Stone to seize Scarborough's men, boats, and goods if he endeavored to exercise the powers of the grant, and to proceed against him according to the laws.

A number of other matters were discussed by Baltimore in this letter.[2] Owing to the loss of records in Ingle's rebellion, he heard that there was no enrollment of divers patents of land, and to prevent the lawsuits which might follow in case the patents themselves should be lost, he ordered Stone to issue a proclamation requiring all persons

[1] 1 Md. Arch., Ass., 328; Bozman, II, 417; Davis, 106.
[2] Bozman, II, 418; 1 Md. Arch., Ass., 329.

to present their patents to the Surveyor General, who must make a list of them. No such proclamation remains on the record, and it is doubtful if the Proprietary's laudable directions were carried out, owing to the troubled times which followed.

Baltimore's wise policy is seen clearly in his direction[1] that a tract of eight or ten thousand acres, called "Chaptico, in the head of Wicomico River," be created into a manor by the name of Calverton for the benefit of Indian tribes, namely, the "Mattapanians, the Wicomicons, the Patuxents, the Lamasconsons, the Kighahnixons, and the Chopticons," who have expressed a desire to "put themselves under our protection and to have a grant from us" of that land. It is less than twenty years from the settlement of the Province when we find these aborigines suing for protection and land from the Proprietary, who had denied from the first their right to sell land without his warrant. Probably these tribes had been harassed by the Susquehannocks and wished the aid of the English. The tribes had formerly dwelt in the vicinity of St. Mary's, and had been "not only always well affected unto" the English settlers, but also "willing to submit themselves" to Baltimore's government. Their settlement on this manor "may be a means not only to bring them to civility but also to Christianity and may, consequently, be as well an addition of comfort and strength to the English inhabitants, as a safety and protection to those Indians." Robert Clarke, the Surveyor General, was appointed steward of the manor, to hold the manor courts and grant as copyholds to the Indians for one, two, or three lives any part of the manor save one thousand acres of demesne lands reserved for the Proprietary. No copyhold estate could exceed fifty acres, save those granted to the Werowance or chief of each of the six tribes, who might have two hundred acres. The rent was at the rate of one shilling sterling per fifty acres, and the steward might also fix services to be rendered by the copyholders. It was a

[1] Bozman, II, 420; 1 Md. Arch., Ass., 330.

curious attempt to introduce feudalism among the redmen, and although it failed the plan shows Baltimore's kind purpose.

In the last Conditions of Plantation of July 2, 1649, one hundred acres were allowed for each person transported to Maryland, but it was feared that it would be "prejudicial to the general good of that colony" to continue so "great allowance of land"[1] because "the people will be too remote from one another and the whole Province perhaps, in a short time, be taken up by a few people, leaving little or no conveniency for others to come and add strength and comfort." Looking back on these times, the danger of occupying all the land does not seem to have been imminent, yet it led Baltimore to cut the grant down to fifty acres for each person transported after June 20, 1652. It has not been noted by historians that the Conditions of Plantation were among the causes of the lack of villages in early Maryland history, but the extensive grants a man could obtain undoubtedly tempted him to live separately upon them rather than close to his fellows.[2]

The Proprietary was anxious "for the better publication and remembrance of the bounds between Virginia and Maryland and prevention of controversies" about them.[3] He also wished to take no risks about losing territory. Therefore, he required Stone to encourage some English at once to take up land near to the bounds, according to the maps, now lost, which he had sent over about two years since. Two tracts of land are specified, that "which is commonly called the Eastern Shore," and that which lies between the Potomac and the Piscataway Rivers, in which last tract are included Giles Brent's residence called Peace and the country

[1] 1 Md. Arch., Ass., 331; Bozman, II, 423.

[2] Bozman thinks that the use of the word "other" instead of "Irish" widens the class of those who might receive grants. In other respects, the Conditions of Plantation of 1649 and the altered oath of fealty are confirmed.

[3] 1 Md. Arch., Ass., 332; Bozman, II, 423. Bozman is quite in the dark here. The records of Stafford County, Virginia, to which President Lyon G. Tyler of William and Mary College called my attention, afford the clue.

of the Doags. In these two tracts an adventurer may still receive one hundred acres for each person transported. This shows that Baltimore thought that Acquia Creek was the true course of the Potomac. A glance at the map shows how different would have been Maryland's boundaries had this contention been successful.

Mitchell was removed from his Councilorship for sedition, adultery, and atheism. To prevent such scandal for the future,[1] the Proprietary directed Stone that, if he found any Councilor, commander of a county, or justice of the peace guilty of like crimes, or twice guilty of "being a usual drunkard, swearer, or curser," the Governor must suspend him from office, appoint another in his stead, and send the proofs of the ill conduct to the Proprietary, who may decide to discharge or restore the person suspended.

Councilors must be diligent in attendance on the Governor at General Assemblies and Provincial Courts, or be fined and have notice of their neglect sent to the Proprietor, that the latter may "put others in their room, who will give better attendance on the public affairs."[2]

The ill affected persons who continued to publish false reports concerning Baltimore and his affairs caused him alarm, lest they should disquiet the minds of the people and infuse jealousies and doubts in the officers.[3] Consequently, he urges upon Stone the use of his best endeavors to suppress such rumors, to find out the authors, and to cause them to be punished. Further, he recommends the General Assembly to pass a law like the English one, "for the punishment of all such as shall publish false news, to the disturbance of the minds of the people." It is interesting to notice that Baltimore has entirely relinquished to the Assembly the right of the initiative in lawmaking. Rumors of

[1] 1 Md. Arch., Ass., 333; Bozman, II, 427.
[2] Bozman, II, 428; 1 Md. Arch., Ass., 334.
[3] 1 Md. Arch., Ass., 335; Bozman, II, 428. Bozman says that the common law gave the right to punish spreaders of false news to the King as part of the jura regalia, but that Baltimore did not suppose that the statutes which confirmed the common law rule extended to Maryland.

gross falsity, alas, continued to be spread through the Province long after Cecilius's death.

This long letter, or declaration, was ordered by Baltimore to be read before the General Assembly, as had been done in the case of his letter of August, 1650, and to be published in the usual places of publishing the Proprietary's "ordinances and edicts."

V. The Commissioners of Parliament of 1651.

The English Parliament, on October 3, 1650, passed an ordinance forbidding all trade or intercourse with Virginia and the West Indies for their "divers acts of Rebellion," and providing "that the Council of State shall have power to send ships to any of the plantations aforesaid, and to grant commissions to such persons as they shall think fit, to enforce all such to obedience, as stand in opposition to the Parliament, and to grant pardons, and settle governors in the said islands, plantations and places, to preserve them in peace, until the Parliament take further order."[1] No steps were taken under this power for a year after it was given, until on September 26, 1651, Captain Robert Dennis, Mr. Richard Bennett, Mr. Thomas Stagg, and Captain William Claiborne were appointed Commissioners "for the reducing of Virginia and the inhabitants thereof to their due obedience to the Commonwealth of England."[2] Although Maryland was not included in the colonies named in the ordinance of 1650, yet the Council of State seems not to have questioned that power had been given them to "enforce" Maryland "to obedience," if such enforcement were necessary. In the year between the passage of the ordinance and the instructions to the Commissioners all men

[1] Bozman, II, 413.

[2] 3 Md. Arch., Coun., 265; Virginia Magazine of History and Biography, XVII, 282. On Bennett see Virginia Magazine of History and Biography, III, 53, and New England Historical and Genealogical Register, January, 1894. He was born about 1622 and died about 1674. Claiborne is discussed by J. E. Cooke in Magazine of American History, X, 83; see also Virginia Magazine of History and Biography, I, 313, and Neill, Terra Mariae, 93.

in Great Britain had been occupied with the Scotch war, until Cromwell's "crowning mercy," the Battle of Worcester, fought on September 3, had overthrown definitely the royal party and firmly established the Commonwealth. The next step was to cut off the trade of the colonies with the Dutch, which was attempted by the passage, on October 9, 1651, of the first of those statutes which we call the Navigation Acts. More important was it to reduce to obedience to the Commonwealth such colonies as the Old Dominion, which still held fast to the monarchical cause.[1]

Baltimore's defender tells us that in the draft of the instructions to Dennis and the others[2] "Maryland was, at first, inserted to be reduced as well as Virginia." Baltimore, however, was able to satisfy the committee, by the testimony of "all the merchants that traded" to Maryland, that this Province "was not in opposition to the Parliament," that Stone "was generally known to have been always zealously affected to the Parliament, and that divers of the Parliament's friends were, by the Lord Baltimore's especial directions, received into Maryland and well treated there, when they were fain to leave Virginia for their good affections to the Parliament." As a result, in the presence of many of the merchants and Dennis and Stagg of the Commissioners,[3] Maryland was stricken from the instructions and ships were permitted to trade there, while none were allowed to go to Virginia. In the body of the instructions, however, was this ambiguous direction, that "upon your arrival at Virginia, you . . . shall use your best endeavors to reduce all the plantations within the Bay of Chesapeake to their due obedience to the Parliament." While Maryland had ceased to be a part of Virginia since the granting of the charter in 1632, from a geographical point of view its plantations were clearly "within the Bay of Chesapeake,"[4] and from

[1] Langford, A Just and Cleere Refutation; Bozman, II, 429.
[2] The Lord Baltimore's Case.
[3] See The Lord Baltamore's printed Case Uncased and Answered, 18, for another text of instructions.
[4] The Lord Baltimore's Case artfully says, "Some part of Maryland, where Baltimore's chief colony is settled being within that Bay."

that fact came dire consequences. After referring to the ordinance of 1650, the instructions state that a fleet is now ready, under Dennis's command, to accomplish the purposes of that ordinance, and they direct the Commissioners, who are appointed for "the management of that service, to repair on board the Ship John, or the Guiney Frigate," and sail for Virginia. To reduce the plantations there two or more of the Commissioners must act together, and Captain Dennis must be one of the majority, if he be present. In his absence Captain Edmund Curtis of the *Guiney Frigate* is empowered to take charge of the fleet and to serve as Commissioner. The Commissioners might pardon the inhabitants who should submit, and must "use all acts of hostility that lies in your power" if they refuse to yield. After the settlers yield, the Commissioners shall administer an oath to them, "to be true and faithful to the Commonwealth of England as it is now established," and then shall supervise the election of burgesses for an Assembly by those who have taken the oath. They "shall cause all writs, warrants, and other process whatsoever to be issued forth . . . in the name of the keepers of the Liberty of England by authority of Parliament."[1]

The three Commissioners from England[2]—Dennis, Stagg, and Curtis—sailed from England shortly after receiving their commission, with a small fleet of ships belonging to the

[1] Bozman, II, 465; see 301, 636, for earlier ordinance of Parliament of Jan. 23, 1646/7, concerning the several plantations of Virginia, Bermudas, Barbadoes, and other places of America which have been beneficial to England, so that goods are permitted to be exported thither for three years without tax (save to Newfoundland), and persons transported thence from England must be registered in a book at the custom house by the person transporting them. No children, apprentices, or servants may be taken without the consent of their parents or masters, of which the Governor of each plantation must return a certificate within a year. No plantation may allow its goods to be exported to any foreign ports except in English bottoms, on penalty of loss of the benefit of the ordinance and payment of custom as merchants do to French, Spanish, and other foreign ports.

[2] Bozman, II, 435; Langford, A Just and Cleere Refutation; The Lord Baltimore's Case. Hammond, in Leah and Rachel, says, "Not religion nor punctilios, but that sweet, that rich, that large country they aimed at."

English merchants trading to Virginia, "who had engaged to assist with their ships in the reducement" of that Province. On the ships were embarked a regiment of seven hundred men and about one hundred and fifty prisoners taken at the battle of Worcester, and transported so as to be sold into service in Virginia. The fleet sailed by way of the West Indies, and at Barbadoes they aided Sir George Ayscue to reduce that island. Thence the expedition sailed to Virginia, but on the way Captain Dennis and Captain Stagg were cast away in the ship *John,* "the admiral of the fleet," and with them the original commission was lost. Captain Curtis, in the *Guiney Frigate,* arrived safely in Virginia with a copy of the instructions, and calling upon the two American Commissioners, Bennett and Claiborne, to assist him, proceeded to reduce Virginia about the end of February. Sir William Berkeley yielded on March 12, 1651/2, and it is said that Captain Stone "did actually assist" the Commissioners in their efforts at Jamestown.[1] Stone's temporizing policy failed, however, to avert a visit from the Commissioners to his Province. From "aboard the *Guiney Frigate* in Maryland" they wrote this report to England,[2] on March 24, 1651/2: "We are now come to Maryland which, being a plantation within the Bay of Chesapeake, we apprehended it our duty to see the Laws of the Commonwealth of England to be put in execution here, by tendering the Engagement and requiring them to give out Process in the name of the Keepers of the Liberty of England by authority of Parliament and not in the name of the Lord Proprietor, as they have been wont to act and now do. We should warily decline anything that may prejudice the Lord Baltimore in his just rights."

After the three "Commissioners of the Council of State for the Commonwealth of England" came to St. Mary's, on March 29, 1652, they removed Governor, Secretary, and

[1] The Lord Baltimore's Case says that Stone furnished assistance and supply of victuals, but Virginia and Maryland denies this.

[2] Virginia Magazine of History and Biography, XI, 34.

Council from[1] office and appointed a new Council of which Robert Brooke was to be the chief, and in which Job Chandler, alone of the Proprietary Councilors, was retained. The new members were Colonel Francis Yardley, Captain Edward Windham, Mr. Richard Preston, and Lieutenant Richard Banks. The Proprietary Councilors had refused to make writs run in the name of the Keepers of the Liberties of England as "inconsistent with the patent of the Lord Proprietor's and their oaths made to him." The Commissioners thereupon decided that obedience to their commissions and the preservation of the honor of the Commonwealth, for settling Maryland in due obedience and peace, demanded a change of administration, "until the Council of State's further pleasure be known." They also demanded that the Governor's commission be given them, and that all the records be delivered into the hands of the new Council. It was ordained that at least two of the new Councilors, of whom Brooke should be one,[2] should hold Provincial Courts, and an Assembly was summoned to meet on June 24. For the election of burgesses to this Assembly only such freemen should vote as had taken an engagement to the Commonwealth.

According to Langford, Stone and the rest of the Proprietary's Council "declared that they did in all humility submit themselves to the government of the Commonwealth of England," but desired to be excused from making writs run in the name of the Keepers of the Liberties of England instead of the Proprietary, as they conceived "the parliament intended not to divest the Lord Baltimore of his right in his province and that they understood out of England that the council of State intended not that the alteration should be made in Maryland." "The king's name hath never been used heretofore," they continued, "in the said writs, but they have always been in the name of the Lord Proprietary, according to the privileges of his Patent ever since the

[1] 3 Md. Arch., Coun., 271; Bozman, II, 439; Strong, Babylon's Fall.

[2] Balch, Brooke Family of Whitchurch, Hampshire, England, 16.

beginning of this plantation. The act in England for changing of the forms of writs, declared only that in such writs and processes, wherein the King's name was formerly used, the Keepers of the Liberties of England should for the future be put instead thereof. The continuing of the writs in the Proprietary's name is essential to his interest in the Province and therefore we cannot, without breach of trust, concur to any such alteration."

Langford wisely comments on this proceeding that "Mr. Bennett and Captain Claiborne took upon them an authority much contrary to the intention of the Council of State and indeed much contrary to common sense and reason."

After the "reducement" of Maryland, both Stone and Hatton became private citizens, but the latter retained enough of favor with the new Council to have them vote, on April 22, that any inhabitant of the Province whom Hatton should select might collect, or levy by execution, the fees due him.[1] By this time the Commissioners had returned to Virginia, where, on April 30, Bennett was elected by the Commissioners and burgesses as Governor of the colony for a year and Claiborne was chosen Secretary. Having firmly fixed themselves in position in Virginia, they returned to Maryland, but apparently without Curtis, who may have gone back to England with their report.

Stone was now willing to yield his claim that writs should run in Baltimore's name for the present and "until the pleasures of the State of England be further known," and a proclamation was issued, signed by Bennett and Claiborne and dated June 28, stating that Stone and Hatton were left out of the Council in March upon "some misapprehension" about issuing the writs, but that now Stone, "at the request of the aforesaid Commissioners and the desire of the inhabitants, is content to reassume his former office of

[1] Bozman, II, 444. Bozman says that Hatton and Banks (who signed the order with Brooke) were related to each other. In Virginia Magazine of History and Biography, XV, 428, is printed the record of bequest by Hugh Hayes in Presbury, Cheshire, England, dated Apr. 17, 1637, "to the son of my cousin Wm. Stone in Va., my godson."

Governor and act according" to the proclamation issued in March. Stone, Hatton, Brooke, and Captain John Price are all reinstated in office. Windham and Banks are left out of the Council, but Yardley and Preston are continued. The way in which the Commissioners set up and knocked down Councilors is most interesting. It was now felt that "the Government is so settled, as is known to be to the good liking of the inhabitants," and "for that and several other reasons" the Commissioners saw no "absolute necessity" for an Assembly at the present time, and so revoked the call.[1]

On the day of the reinstatement Stone held a court, at which all of his six Councilors except Price were present.[2] The chief matter before them was a proposed peace with the Susquehannock Indians, the conclusion of which would "tend very much to the safety and advantage of the inhabitants here, if advisedly affected," and which the Indians were said to have a long time desired and much pressed. Bennett, with at least two of the following men, namely, Lloyd, Captain William Fuller, Thomas Marsh, and Leonard Strong, was appointed to treat with the Indians and endeavor to conclude a league with them. The Commissioners were also directed to examine into the conduct of Captain Vaughan, against whose commandership of Kent Island complaints had been made by the inhabitants. If the examination showed that Vaughan should be removed, the Commissioners were empowered to do so and appoint Mr. Thomas Marsh, or some other fitting person, as commander in his room. We have no record that the Commissioners ever examined into these complaints against Vaughan, which were said to be of long standing, the complainants having several times attended the Provincial Court to make their charges against him. At any rate, on December 18 we find Vaughan still serving as commander of the Isle of Kent.[3]

[1] It is probable that writs of election were never issued for this Assembly. 3 Md. Arch., Coun., 275.

[2] 3 Md. Arch., Coun., 276. In H. R. Schoolcraft's History of the Indian Tribes of the United States, VI, 128–146, is found an account of the Susquehannocks or Andastes or Minquas or Conestogas, and of the Nanticokes or Conoys or Tochwoghs.

[3] Bozman, II, 453.

The five Commissioners went north to the Severn River[1] and there met an equal number of Indian chieftains, and made a treaty, which was witnessed by William Lawson and Jafer Peter for the Swedes Governor. This last fact lends color to the story that the Swedes were in alliance with the Susquehannocks. The terms of the peace[2] were that the English title was acknowledged to all land north of the Patuxent River and south of Palmer's Island and the North East River, "except the isle of Kent and Palmer's Island, which belongs to Captain Claiborne." On Palmer's Island, however, either English or Indians may build a house or fort for trade.

It is curious that Claiborne interfered so little in the affairs of Maryland after the Puritan ascendancy was established. Bozman surmises, and lack of evidence renders only a surmise possible, that Claiborne was content with collecting quit rents from the people of Kent and permitted the government of the island to be carried on by the Maryland authorities, and it is certain that the civil authority on the island was subordinate to that of the Province during the whole of the period. Palmer's Island must have been abandoned at the time of the treaty, and probably Berkeley's grant of it had not been availed of. After fixing the boundaries, which left in the Indians' hands the country between the North East and Susquehanna Rivers, the treaty went on to provide for mutual reparation and satisfaction for future injuries done, for mutual return of fugitives, for which return a reasonable payment should be made, and for twenty days' warning before war should be begun. Both Indians and English must carry the tokens now exchanged between the parties whenever they have business with each other. While upon these expeditions the Indians shall come

[1] Tradition says that the meeting was held under the poplar tree on the St. John's College grounds, in Annapolis; see J. W. Randall, 19.

[2] 3 Md. Arch., Coun., 277; Bozman, II, 449. Bennett was now Governor of Virginia, but acted with the other Treaty Commissioners, doubtless as one of the Parliamentary Commissioners. South of the Patuxent was not Susquehannock territory. The Indian signers were Sawahegeh, Aurotaurogh, Scarhuhadih, Ruthcuhogah, and Wathetdianeh.

by water and not by land, and not more than eight or ten in number at one time, to avoid danger of trouble.

VI. The Proprietor's Struggle in England to Retain his Province.

Among the English State papers we find in the summer of 1652 an anonymous series of reasons why it was well to keep the government of the Province divided from that of Virginia,[1] and a petition was presented by Thomas Harrison in behalf of "some well affected inhabitants of Virginia and Maryland."

In 1653 there was published anonymously "The Lord Baltimore's Case," to which were appended the anonymous reasons above referred to and a copy of the commission from "the late King's eldest son to Mr. William Davenant to dispossess the Lord Baltimore" of Maryland, "because of his adherence to the Commonwealth." After claiming that the charter of Maryland had been granted to prevent the Dutch and Swedes from encroaching on Virginia, and referring to the expenditure of £20,000 by the Proprietary and of as much more by his friends on the Province where two of his brothers have died, the pamphlet gives an account of the action of the Parliamentary Commissioners, Bennett and Claiborne, and then tells us what had happened

[1] 3 Md. Arch., Coun., 279, 280. The arguments are: (1) that the Commonwealth may control two colonies easier than one large one; (2) that in case of a defection of either colony the well affected may flee into the other; (3) that there will be a rivalry between the colonies to satisfy better the Commonwealth and the planters; (4) that Baltimore's estate and residence in England give better assurance of his loyalty than the Commonwealth could have from those whose interests were wholly in America; (5) that Baltimore pays the Deputy Governor's salary and thus saves the colonists from that expense; (6) that if Baltimore should be prejudiced in his right, it would be a great discouragement to others in foreign plantations to adhere to the Commonwealth, since he ordered his officers to adhere to it, when all the other plantations except New England declared against the Parliament, for which conduct and for receiving the Puritans he was like to be deprived of his interests by the colony of Virginia and the royalist party. This is printed in The Lord Baltimore's Case. The petition is found in Virginia Magazine of History and Biography, XVII, 286.

in England thereafter.[1] Samuel Matthews of Virginia had come to England in behalf of that colony, and Baltimore, with twenty "considerable Protestant adventurers and planters to and in Maryland, who were always well affected," signed a petition on August 31, 1652, against the reincorporation of Maryland into Virginia, from which province Maryland had been separate for over twenty years, and for the reinstatement of the Proprietary officials. A member of the House of Commons produced some papers sent by the Puritan party in Maryland, in the hope that they would show that Baltimore had forfeited his patent, or at least that his authority was not "fit to be allowed" by Parliament. The House then referred the matter to the Committee on the Navy, before which Baltimore appeared, showing his patent and claiming that the present inhabitants of Virginia never had any right to the territory of Maryland.[2] One of the committee submitted exceptions against the patent and Baltimore's proceedings under it, to which he replied. After some debate, the committee decided to deliver no opinion in the matter, but to refer it to a subcommittee, from which it should be reported to the grand committee and by them to the House.[3]

Before this report was made, in all probability the pamphlet was issued, in the hope of influencing public opinion. In addition to "the pretended injury done the Virginians" by the Maryland charter and that done Claiborne by dispossessing him of Kent, it was alleged that the patent constituted an hereditary monarchy in Maryland inconsistent with the Commonwealth, and that Baltimore

[1] See also Langford, A Just and Cleere Refutation. Strong, in Babylon's Fall, admits that the Puritans had appealed to England about the oath, and that their appeal had "depended four years without hearing."

[2] See Virginia and Maryland. "[Lord Baltimore's] Reason of State concerning Maryland," Virginia Magazine of History and Biography, XVII, 288.

[3] In Virginia and Maryland it is stated that Claiborne's Kent settlement overruled the hactenus inculta clause, and that the Virginia patent was not vacated on the record of the Rolls Office, and therefore, when it was taken out again by Baltimore's enemies in 1640 under the broad seal, it overthrew his charter.

had shown disloyalty to the Commonwealth by consenting in 1650 to the laws passed in 1649, in one of which the late King is styled the "high and mighty Prince, Charles the first of that name, King of England,"[1] and in another of which Baltimore is given customs duty on tobacco shipped from Maryland for any other port "than His Majesty's," by which he acknowledged Charles II as King. Baltimore's advocate answers these new charges, stating that a monarchical government, subordinate to a commonwealth, is consistent with it, as is seen by the kings tributary to Rome and by the lords of manors in England, whose writs yet run in their own names and to whom their tenants take oaths of fealty. Baltimore's powers, greater than those of the English lords of manor, would not be convenient in England, but are necessary for the undertakers of plantations in so remote and wild a place as Maryland, and his laws there must be consonant to reason, not repugnant to those of England, and made with the consent of a majority of the freemen. No one would be so indiscreet as to undertake a plantation if, after all his charge and hazard, "such necessitous, factious people, as usually new plantations consist of for the most part," men sent thither by him and often at his charge, should have power to dispose of all his estate there without his consent, for he might thus be ruined before the English authority on an appeal might be at leisure to relieve him. It is true that Baltimore is a Roman Catholic, but the laws against recusants do not reach into America, and it is far better that he possess the country than Indian kings or foreigners, such as the Dutch and Swedes. None are compelled to go to Maryland or stay there, but all know beforehand the terms of settlement, and the people of the Province in general, both Protestants and Roman Catholics, are pleased with their government.[2] To the complaint that his laws recognized Charles II by referring to Charles I, the reply was made that in so speaking, as of first-born sons,

[1] I can find no such phrase in the Acts of 1649.

[2] A petition with ten signatures against Baltimore in the name of the inhabitants of Maryland is said to be either fictitious or "signed by some few obscure factious fellows."

James I, or the first year of a reign, no second is implied, but the "word first hath relation to time past," and that, when the laws were passed in April, 1649, the people in Maryland did not know of the King's death, but referred to Charles I by the term "His Majesty." Ships return to England from Maryland in February, March, and April, and go thither in September, October, and November, so no news had come into the Province of the King's death.[1]

In the pamphlet which the Puritan party issued two years later in reply to "The Lord Baltimore's Case," and which they entitled "Virginia and Maryland," answers are given to Baltimore's advocate and many more charges are made. As Claiborne had settled the country, it was not uncultivated when the Maryland charter was issued. The Virginia charter has been revived, therefore the Maryland one is dead. Baltimore has prevented the Virginians from enjoying the fur trade and thrown it into the hands of Dutch and Swedes. He enforced illegal oaths to maintain himself as Proprietary and to protect the Roman Catholics in the free exercise of their religion, sending out instructions therefor, as if he were king. He carried on the government, not naming the sovereign authority of England. He took away most of the Virginia territory by his charter, yet has but few planters and these mostly employed in tobacco-raising in a small corner of Maryland—men who sell arms to the Indians almost as openly as the Swedes and Dutch.

The Province is a nursery for Jesuits, and admits Papists and Irishmen.[2] His first Governors were Romanists.

[1] The Lord Baltimore's Case, concerning the Province of Maryland adjoining to Virginia in America, with full and clear answers to all material objections touching his rights, jurisdictions and proceedings there, and certain reasons of State why Parliament should not impeach the same, unto which is also annexed a true copy of a commission from the late King's eldest son to Mr. William Davenant to dispossess the Lord Baltimore of the said Province because of his adherence to the Commonwealth. 1653.

This pamphlet is reprinted in Maryland Historical Magazine, IV, 171.

[2] Of the Irish two thousand came, and it had been said of them, "Those Irish would not leave a Bible in Maryland." The Puritans point to the troubles with Claiborne, to Leonard Calvert's commission from the King, to Greene's proclamation of Charles II.

There is a chapel to St. Ignatius and his feast-day is kept as a holiday, while the Protestants are miserably disturbed, or enforced by subtile practices to turn Papists. He has made laws not agreeable to those of England, divided the legislature into two houses, and established a Privy Council of State (to which he calls whom he will) not mentioned in his charter. He permits Dutch, French, or Italians to plant and enjoy equal privileges with the British and Irish. There are no appeals from his courts and the judges often decide their own cases. Baltimore has made no great adventures on the Province. The assistance of Virginia, whence Maryland was chiefly planted, was essential to its subsistence, yet Virginia has found the northern Province continually inviting and entertaining runaway slaves and debtors. When one reads this long list of complaints, the conclusion seems to be that the writer wished Virginia and Maryland to be united into one Puritan-ruled Province and took any arguments which he thought would advance that purpose.

VII. Governor Stone, 1652–3.

Though the difficulties with the Susquehannocks were settled, other Indians gave much trouble. Against the Yoacomico and Matchoatick tribes who dwelt on the south side of the Potomac, Governor Stone issued a proclamation on August 9, 1652.[1] They hunt in St. Mary's and Charles Counties, and destroy game, hogs, and cattle. Also, their insolencies are not to be endured. Therefore the inhabitants are forbidden to entertain or trade with these Indians, "excepting any Indian cowkeeping youth," and the Indians are given fair warning to be gone. If they do not heed this warning, Captain John Price shall levy soldiers and drive them from the Province.

A more serious difficulty occurred in November[2] when

[1] 3 Md. Arch., Coun., 281.

[2] 3 Md. Arch., Coun., 279. Henry Morgan, John Phillips, Philip Conner, Thos. Ringgold. Bozman, II, 419, 455. In 1648 a writer reported but twenty men on the island and the fort pulled down. If this were so, the settlers were clearly too weak to resist an Indian attack. Bozman conjectures that the Susquehanna treaty ceding the Eastern Shore may have aroused the Nanticokes.

four of the Commissioners of Kent petitioned Stone and the Council to consider their "deplorable condition and take some speedy course for the suppressing of these heathens." The Eastern Shore Indians had killed three Englishmen on the island, burned a dwelling-house, continually killed hogs, and daily came about the houses with guns. They are said to have much ammunition which they have bought, taken from "Capt. Guignis his Rack" and from a Dutch sloop which they have lately seized, with forty-nine guns besides very much powder and shot, "so that they are very strong, bold, and insolent." For fear of them many Englishmen have already left their plantations and others plan to desert the island. On November 25 the Council received this petition.[1] Stone, Yardley, Price, Hatton, and Chandler were present, and called upon the advice and assistance of several others, among whom was Captain Thomas Cornwallis, who had not recently been prominent in the Province. After consideration, it was ordered that every seventh man in the Province be pressed to raise a force for a march against these Eastern Shore Indians. The sheriffs of the various counties are to manage the levy, from which Councilors, Commissioners, and other officers are exempt, and to procure boats for transportation of the expedition.[2] The six men not pressed must victual the seventh for an expedition of twenty days from the time of meeting at the rendezvous on Kent Island, and must provide him with a gun and ammunition. On December 20 the levies from St. Mary's and the Patuxent must meet at Mattapany upon the latter river. Then the Governor shall appoint them a commander who must lead the expedition across to the rendezvous on Kent Island on December 30. There Captain William Fuller shall take command of the whole force.[3] The Indian

[1] 3 Md. Arch., Coun., 282. We have no other account of the capture of the Dutch sloop.

[2] No exceptions of persons allowed here.

[3] Wm. Thompson, servant to John Jarboe, must be pressed, and the necessary tools for his fixing of guns must be procured from John Dandy.

prisoners who may be taken are to be divided among the six men who equip the expedition,[1] while "all other purchase or plunder, whether of corn or otherwise," shall be divided amongst the commander and soldiers. Four days later Stone issued a commission to Fuller as commander in chief, and directed him to have forces levied in Anne Arundel County. After leaving the Kent Island rendezvous, Fuller, with his troops, is directed to march against any Indians on the Eastern Shore within the limits of Maryland, to make war upon them, and kill or take them prisoners in his discretion.[2] He might put his prisoners "to death by the law of war, or save them" at his pleasure, and when we find such laws of war upheld by Europeans, we can hardly condemn the cruelty of their Indian foes. Fuller might pursue his adversaries, if occasion arise in the war, "beyond the bounds" of Maryland, as was done by Jackson in his pursuit of the Seminoles into Florida in 1818.[3] On the same day on which Fuller's commission was issued Stone signed orders to the sheriffs to muster the men.[4] Kent should provide one sloop, Anne Arundel as many sloops as necessary, and St. Mary's, Charles, and the north side of the Patuxent two more. On the next day he issued orders to the constables in the three last named divisions of the Province to aid the sheriffs, and on December 2 he ordered[5] Preston, who is spoken of as "Commander on the North side of Patuxent River," "to appoint officers to raise men on either side" of that river. In spite of these elaborate preparations, the expedition never set forth. Stone's letter reached Fuller on December 6, and when Fuller went among the Puritans, he found them "wholly disaffected, not to the

[1] Bozman (II, 458) points out that at that time it was held that the victor, having the right to put a captured enemy to death, must have a right to enslave him as a humane commutation, and that Grotius held this view.

[2] 3 Md. Arch., Coun., 285. Bozman (II, 459) has an interesting note concerning Wicocomoco Point, mentioned in the commission to Fuller as the southernmost point of the Province.

[3] Bozman, II, 459.

[4] 3 Md. Arch., Coun., 286.

[5] 3 Md. Arch., Coun., 288.

thing," which would "be of good use, if wisely managed," but to "the time of the year." They said that it would probably "be dangerous for their health, first, in regard [to] the want of necessaries, as also want of vessels fit to transport them and, next, that it is possible they may be frozen into the rivers and so expose themselves to more dangers through cold and want of necessary provisions than by the enemies." Furthermore, Fuller found that the Western Shore Indians knew of the proposed expedition before he received his commission, and it were well to put off the march for this reason and to make an order against revealing the Council's designs to any Indians. Therefore Fuller wrote Stone, on the thirteenth of December, advising that a delay be made until the "extremity of the winter be past." Fuller does not wish to seem "to slight the power God hath placed over me, but am ready to submit to it and that, really, as for myself, I am ready, both now and at any other time, to do yourself and the country all possible service." As a proof of this readiness, he plans, "if weakness of body prevent not," to give the Islanders "a visit and advise with them," and will "readily assist them, if occasion be offered, with men or otherwise."[1]

When Fuller's letter reached Stone, he issued a proclamation, dated December 18, giving up the expedition for the present, on the grounds of the reasons which Fuller named and because the soldiers had great want of apparel and other necessaries.[2]

On the day on which the last named proclamation was issued Stone issued a second one,[3] revoking the permission to Lloyd and Vaughan, which had been given on July 29, 1650, to grant warrants for land. The transmission of the warrants and of the certificates of survey had been neglected, to the prejudice of the Proprietary's rents and to the

[1] 3 Md. Arch., Coun., 289.
[2] 3 Md. Arch., Coun., 290.
[3] 3 Md. Arch., Coun., 290. The publication of Land Notes 1634–1655, being abstracts of the entries in the Land Office Records, was begun in Maryland Historical Magazine, V, 166, and continued on pages 261 and 365.

wrong of the Secretary's office. To prevent this, the power is revoked, and Vaughan and Lloyd must send transcripts of all the land records of their counties to the Secretary at once. Clarke, the Surveyor General, is also ordered to send speedily to the Secretary all certificates of survey not yet returned, and to survey no land in future for any one without a special warrant from the Governor or the Proprietary.[1] The lack of return from these officers was a cause of trouble in the Province for a century afterwards by making titles uncertain.

In the autumn of 1652[2] the first settlement was made within the present limits of Baltimore County. The Surveyor General landed from his shallop on the shores of the Patapsco River, and laid out on November 19 five tracts of land on the south bank. Crossing over to the north bank, he laid out there on November 20 six hundred acres for Thomas Sparrow, under the name of Northconton, and one thousand one hundred and fifty acres for Thomas Thomas and William Batten jointly, under the name of Old Road. Two days later two more tracts were laid out by the Surveyor General before he left the river: one of four hundred and twenty-five acres for Richard Owens and one of three hundred acres for Augustin Gillett. Of the grantees who pushed thus far into the wilderness, Thomas Sparrow is still remembered in the name of the "busy industrial town" of Sparrow's Point.

The troubles with the internal government and with the Indians had probably been partly the cause of a scarcity of corn, which led Stone to issue a proclamation, on January

[1] His previous irregular and unwarrantable proceedings had occasioned much trouble and inconvenience. Bozman (II, 461) thinks that the failure to transmit these warrants was due to disloyalty to the Proprietary, but the circumstances are scarcely clear enough to prove his point. He thinks Lord Propy. v. Jennings, 1 H. & McH. 92, was the result of Lloyd's and Clarke's carelessness. Kilty, 76, April 5, 1653. Stone authorized Hatton to grant land warrants on the Patuxent at a convenient distance from any Indian town, in spite of former directions to the contrary.

[2] C. W. Bump, "The First Grants on the Patapsco," Maryland Historical Magazine, III, 53. The early death in April, 1908, of this faithful scholar is much to be regretted.

24, 1652/3, that no one should transport from the Province, until Michaelmas next, without a special license from Stone, any corn which he might buy from Indians inhabiting within the Province.[1] This proclamation shows clearly that the yield of the planters' corn-fields was not as yet sufficient for their use and that they were still largely dependent upon the Indians' crops, though nearly twenty years had passed since the first settlement. The free trade with the Dutch had probably been an incitement to the cultivation of tobacco, and induced the planters to neglect the cultivation of cereals. The Dutch trade was now cut off, however, for Parliament on October 9, 1651, had enacted the earliest of the Navigation Acts, providing "that no merchandise from the plantations" should be imported into England in any but "English-built ships, belonging either to English or English plantation subjects, navigated also by an English commander, and with three fourths of the sailors Englishmen." In 1652 Parliament tried to increase the tobacco monopoly and production in the plantations by passing an act "against planting tobacco in England."

In the spring Indian rumors were heard again, and this time the Indians of the Potomac were the ones feared.[2] Gerard was authorized, on March 24, 1652/3, to use the best means he could to discover their designs, and to go to Port Tobacco, or Chaptico, for that purpose. Cornwallis and Brooke were also consulted. One of Brooke's sons and another man were employed as "intelligencers" among the Indians living upon Patuxent River. If the Mathue Indians should come to trade with the Patuxents, the intelligencers must give notice to Brooke and Preston, who were to apprise Stone so as to arouse the militia under Captain Price to destroy these Indians.

Toward the end of July[3] four Piscataway Indians, two

[1] 3 Md. Arch., Coun., 293; Bozman, II, 463.
[2] 3 Md. Arch., Coun., 293; Bozman, II, 467. The Mathue Indians have not been identified.
[3] 10 Md. Arch., Prov. Ct., 293; Davis, 151, 270 (verdict was given on the faith of the jurors).

of whom were named Skigh-tam-mongh and Couna-weza, entered Captain Daniel Gookin's house on South River in Anne Arundel County, in which, apparently, were at the time only a negro servant, Jacob Warrow, with his wife, Mary, and their seven-year-old son. The Indians remained in the house for about an hour, and then, as Warrow stooped down, they fell upon him with their tomahawks and killed him. His wife started to flee with the child, but one of the Indians struck her with his tomahawk as she was going out of the door, so that she fell senseless. When she came to herself she saw that her child was killed, but managed to creep into the weeds by the house and watch the Indians pillage the house of guns, powder and shot, wearing apparel and bedclothes, pewter ware and hats. The two Indians named above, one of whom the negress identified as the one who struck her, were found with some of the stolen goods and were delivered to the settlers by "Warcosse, the Emperor." At the trial on September 26, 1653, they admitted that they were present when the man and child were killed, and were tried by a jury of twenty-four of the freemen of St. Mary's County. These brought in a curious verdict that, if the Indians had not consented to the murders, they ought to have withstood their companions or revealed these acts, but "doing neither and receiving stolen goods (as they confess) as hired to conceal it," they were guilty of the murder. The court sentenced them to be hanged, "which execution was performed the same evening accordingly."

On September 26, 1653, Stone adjourned the Provincial Court until December 1; but on November 7 he further postponed it until January 10, as no necessity appeared of holding a court so soon.[1] No English shipping had yet arrived, and, for "divers reasons relating to the public welfare, it were requisite . . . that we received some directions out of England touching the government here, before a General Court." The court was again postponed[2] and met on February 1, 1653–4. The Dutch war raged during this year,

[1] 3 Md. Arch., Coun., 294, see 10 Md. Arch., Prov. Ct., 278 and 296.
[2] 10 Md. Arch., Prov. Ct., 309; Bozman, II, 469.

and the overthrow of the Parliamentary government in England by Cromwell, on April 20, 1653, may not have been officially reported owing to the dangers to navigation. Rumors of Cromwell's act had probably come, and may have caused Stone's delay of the meeting of the court until he had definite news as to what the government was in the mother-country.

In July, 1653, Colonel Matthews, the agent for the colony of Virginia, urged the authority of the Commissioners before the Committee of Petitions of Cromwell's first Parliament; but his petition was either dismissed or referred to the Council of State, "as more proper for their consideration."[1]

Before the Provincial Court met, Stone had issued two proclamations.[2] In January he forbade any one to molest Simon Oversey, an Englishman born, and an inhabitant of Maryland and Virginia for several years past, in the following of his lawful occasions of trade, and he refused to intermeddle in the matter of the seizure of a Spanish prize called the *Maid of Gaunt,* taken in the St. George's River[3] by Captain Thomas Webber in the *Mayflower* of London. Stone referred the trial of the business to the London Court of Admiralty, and promised Webber and the merchants on the *Mayflower* that they should not be troubled in their free trade within Maryland in either ship. On June 12 a certificate was given Oversey that Webber had carried out of Maryland in this prize forty-six hogsheads of the former's tobacco, and had refused to submit to a trial of the matter before the Governor and Council.

VIII. Stone's Breach with the Commissioners, 1654.

By February shipping had doubtless come from England, and as a result of the letters and other news received thereby,

[1] Langford, A Just and Cleere Refutation; Bozman, II, 470.
[2] 3 Md. Arch., Coun., 298, 306.
[3] The sails of the captured ship were on shore when the ship was seized, and Stone said that he would consider whether they, by statute or justice, were part of the prize and would secure them until he gave a positive answer to the question.

Stone issued a proclamation on February 7,[1] dated, as were all of his, at St. Mary's, "by the special appointment and direction" of the Proprietary. Many have not sued out patents for land, nor taken the oath of fidelity according to the Conditions of Plantation, yet Baltimore will not take advantage of this default, but will allow land claimed under the Conditions of 1649 if the claimants take the oath, sue out the patent, and pay all arrears of rents within three months. If they do not obey this order, they shall be debarred from all rights to the lands so claimed. Four days after this proclamation, Chandler and Clarke took the oath of Councilor to the Lord Proprietary.[2] The latter was now first added to the Council, the former had probably not taken the oath before the Parliamentary Commissioners reduced the government. As the oath contained a clause that the taker would not molest any one, particularly a Roman Catholic, for his religion, the Puritans held that it was in plain words to "countenance and uphold anti-Christ."[3]

Stone took the decisive step of breaking away from the orders of the Parliamentary Commissioners on March 2, 1653/4, when he decreed that writs should "run in the Proprietary's name as heretofore,"[4] inasmuch as this "cannot any ways derogate from our obedience" to the Commonwealth. Stone professed that he was careful not to infringe his engagement to the Commonwealth that he would be true and faithful to the Commonwealth of England as it is now established, without King or House of Lords. He also cautioned the Commissioners of Kent to raise "convenient forces" on the Island to prevent mischief suspected from

[1] 3 Md. Arch., Coun., 298; Bozman, II, 473. Bozman remarks that Baltimore's instructions of February 17, 1652/3 (now lost), may have come in this fleet.

[2] 3 Md. Arch., Coun., 299; Bozman, II, 478; 10 Md. Arch., Prov. Ct., 322.

[3] Strong, Babylon's Fall.

[4] 3 Md. Arch., Coun., 300; The Lord Baltamore's printed Case Uncased and Answered, 28, 30, 32; Bozman, II, 478. Browne (Maryland: The History of a Palatinate, 78) holds that Baltimore directed Stone to do this because Cromwell had succeeded to the Protectorate in England. Virginia and Maryland says that it was done by Baltimore's direction.

the Indians. When Stone proclaimed Baltimore, he arranged with two shipmasters whose vessels were in Maryland to fire off pieces of ordnance in celebration of the event.[1]

Colonel Francis Yardley became discontented at this time. He had been placed by Bennett and Claiborne in the Council at the "reducement of the Province." As early as March 4 he was reported to show "contemptuous carriage and demeanor towards the government," and was suspected of intending "to remove his estate out of this Province and to leave his debts and engagements here[2] unsatisfied." To prevent this, a writ was issued by Stone, on March 20, prohibiting Yardley from leaving the Province. It may be, as Bozman points out, that this writ was issued by Stone, in his capacity as Chancellor, to prevent Yardley from removing his property out of the Province.

Just two days before issuing the writ against Yardley, Stone licensed Captain Thomas Adams, mariner,[3] who had lately purchased a plantation in Maryland, to trade for any merchandise not forbidden by the laws with the Swedes "in Delaware Bay, or in any part of this Province, being not enemies to the Commonwealth, as also with any Indians on the Eastern Shore . . . not in open hostility with the inhabitants here." He must take care, however, to keep his vessel well manned and armed, to prevent danger from the Indians. The Statute of 1650 prohibited Indian trade without license, and the Swedish trade must have been considered to be included in the prerogative powers of the Lord Proprietary. New Haveners, Swedes, and Dutchmen were claiming the land on the Delaware and endeavoring to establish colonies there. The history of this contest is a most interesting one, but, though the territory was largely included

[1] Hammond, Hammond versus Heamans.

[2] Bozman, II, 478; 3 Md. Arch., Coun., 301. The writ was addressed to Lieutenant Wm. Lewis, George Dolty, or Edmond Lindsay. Deposition that Col. Yardley said that he intended to remove to the southward, and attachment laid on his property in the Province on March 4, 10 Md. Arch., Prov. Ct., 343.

[3] 3 Md. Arch., Coun., 301; Bozman, II, 479.

within Baltimore's patent, the events of the struggle are not properly a part of the history of the Province.[1]

In April, Hatton brought in his return of the Dutch customs, which he had received and partly paid to the soldiers,[2] and eighteen receipts were filed from the latter or their assigns. It may be remembered that an act in 1649 provided that all tobacco shipped in Dutch vessels to any other than British ports should pay the Proprietary a duty of ten shillings per hogshead, half of which was to be applied to paying the soldiers who recovered the Province for Baltimore.

Thomas Belcher of Anne Arundel County was licensed to keep an ordinary there, which act showed that Stone resolved to reestablish his authority throughout all the Province.

Cromwell received back the powers of government from the Little or Barebones Parliament on December 12, 1653, and four days later the Council of Officers declared "that the government of the Commonwealth should reside in a single person, that that person should be Oliver Cromwell, Captain General of all the forces in England, Scotland and Ireland, and that his title should be lord protector of the Commonwealth of England, Scotland & Ireland and of the dominions and territories thereunto belonging." In his name should all writs run from that time forth. The news[3] of this event reached Maryland in the spring of 1654 and was hailed with joy by Stone, who saw in it a means to support his conflict with the Commissioners. Therefore, on May 6, he issued a proclamation of the Protectorate, commanding all persons to submit to it. "In commemoration of this solemnity" he made public announcement of the pardon of all crimes except treason, rebellion, or conspiracy against the Lord Proprietary.[4] Persons especially excepted from pardon by Baltimore and those owing forfeitures adjudged to be paid but not yet satisfied were also exempted from the benefits of the proclamation.

[1] Bozman, II, 481–492.
[2] 3 Md. Arch., Coun., 302; 10 Md. Arch., Prov. Ct., 345, 372.
[3] Bozman, II, 495.
[4] 3 Md. Arch., Coun., 305; Bozman, II, 498.

We have not many more glimpses of Stone's governorship. On June 23 we find two depositions on the records concerning the recent execution by the sailors as a witch of one Mary Lee on the voyage of the Ship *Charity* of London, England,[1] and on July 3 Stone, with the advice of his Council, repealed the ordinance of November 21, 1650, which erected Charles County, and erected the territory on both sides of the Patuxent River into Calvert County, of which county Richard Collett was made high sheriff. The reason for this change was that instructions[2] of September 28, 1653, from Baltimore had been received which had "discharged Robert Brooke, Esq. late Commander of Charles County from being of the Council, Conservator, or Justice of the Peace, or Commander of any County." The cause of this displacement we can only surmise, but shall probably state it correctly as the Proprietary's dissatisfaction with Brooke's willingness to act as President of the Council when the reducement of the Province was made by Bennett and Claiborne.

Before issuing his new decree that writs would run in the Proprietary's name, Stone seems to have insisted on the oath of fidelity,[3] and on January 3, 1653/4, Edward Lloyd and seventy-seven householders and freemen from the Severn River, by letter to Bennett and Claiborne, complained of the oath as "not agreeable to the terms on which we came hither, nor to the liberty of our consciences as Christians and free subjects of the Commonwealth of England and, indeed, contrary to the engagement taken thereto." Stone had said that he would seize the lands of all who did not take the oath within three months. The Puritans complained to the Council, but had received an aspersion cast upon them of being factious fellows, instead of an answer which would clear the lawfulness of Baltimore's proceed-

[1] 3 Md. Arch., Coun., 306; "Relatio Itineris in Marylandiam," Maryland Historical Society, Fund Publication no. 7, p. 90.
[2] 3 Md. Arch., Coun., 308; Bozman, II, 500. The instructions are lost.
[3] Virginia and Maryland.

ing. They asked for help, believing that the Commonwealth would not expose them to such real bondage as to make them swear absolute subjection to a government where the ministers are bound by oath to countenance and defend the Roman Popish religion and carry on arbitrary power. In answer to this petition Bennett and Claiborne admonished Stone of his error; nevertheless, when the men of Patuxent refused to take the oath, Stone denounced them as seditious and rebellious, and included Bennett and Claiborne under the same charge with other opprobrious terms.

On March 1 Richard Preston and sixty other freemen of Patuxent addressed Bennett and Claiborne, asking protection from the "pride, rage, and insolency of enemies." The writs now run in the Proprietary's name, and an oath is demanded, contrary to the engagement to the Commonwealth and the word of God, for it obliges them to "maintain Popery and a popish Anti-Christian Government, which we dare not do, unless we should be found traitors to our country, fighters against God, and covenant breakers." They wished help, at least until they could appeal to England.

Bennett and Claiborne answered this letter, on March 12, 1653/4, advising and requiring the petitioners to continue in the establishment made by the Parliamentary Commissioners, as no sufficient order from Parliament is known to the contrary, in spite of the pretence of power from Baltimore or his agents. Frequent requests came to Virginia from men of Severn, Patuxent, and Kent for relief, so back into the Province came Bennett and Claiborne.[1] The Parliament from which they derived their authority had expired over a year ago, and no legal authority under which they might act appears, but the fact that writs ran again in the Proprietary's name, that the oath of fidelity to him was demanded from those who took up land in the Province, that the Councilors had to swear not to molest Roman

[1] Bozman, II, 501; 3 Md. Arch., Coun., 311; Langford, A Just and Cleere Refutation.

Catholics, that Brooke had been displaced from and Clarke added to the Council, aroused Bennett and Claiborne to action.

About July 10 they "applied themselves"[1] to Stone and his Council, but received what they styled "opprobrious and uncivil language." Stone was also charged by them with mustering his "whole power of men" in arms, intending to surprise the Commissioners by night. Then they went northward across the Patuxent, as they said, "in quiet and peaceable manner, with some of the people of Patuxent and Severn." At Patuxent, on July 15, they issued a proclamation against Stone. Bennett had sent for aid from Virginia, of which colony he was Governor, and Stone was thus between two fires. He, therefore, sent word that the next day he would meet and treat in the woods, to prevent effusion of blood and the ruin of the country, and as a result, on July 20 he "condescended to lay down his power lately assumed from the lord Baltimore and to submit . . . to such government as the commissioners should appoint" under the Protector.[2]

The Commissioners, therefore, on July 22 directed Hatton to deliver the Provincial records to William Durand,[3] the elder of the Puritan settlement, whom they appointed Secretary, and they issued a commission of government which they falsely said was given by them as "Commissioners for his highness, to the reducing and settling the Plantations of Virginia and Maryland" under his obedience. This document refers to the former "reducement," to Stone's return to the use of the oath of fidelity and of the

[1] Strong, Babylon's Fall; Bozman, II, 504, 684; 3 Md. Arch., Coun., 311; Virginia and Maryland.

[2] Hammond, Hammond versus Heamans; Virginia and Maryland (Gerard, Hatton, and Scarborough witness his resignation, and Strong calls Scarborough a mischievous instrument of Baltimore).

[3] Davis, 70; Neill, Founders of Maryland, 116. Thomas Marsh was Durand's servant when he came to Maryland. In October, 1651, Durand took up land at the Cliffs for himself, wife, five children, two freemen, and five servants. He had sat under Davenport's preaching in London. A Quaker wrote home in 1658: "Wm. Fuller abides unmoved. I know not but Wm. Durand doth the same" (Neill, Founders of Maryland, 116).

Proprietary's name in writs, and to a lost proclamation, issued by Stone on July 4, charging the Commissioners and those who refused to take the oath of fidelity with drawing away the people and leading them "into sedition, faction, and rebellion against the Lord Baltimore."

Therefore, Stone is deposed, as is his Council, and Captain William Fuller, Richard Preston,[1] William Durand, Edward Lloyd, Captain John Smith, Leonard Strong, John Lawson, John Hatch, Richard Wells, and Richard Ewen are appointed "Commissioners for the well ordering, directing, and governing the affairs of Maryland" under the Protector. Four is to be their quorum, and Fuller, Preston, or Durand must be present at each meeting. They shall issue writs, hold courts, and summon an Assembly to meet on October 20. At the election for this Assembly no one shall vote or be chosen as a member who had "borne arms in war against the Parliament" or who professed the Roman Catholic religion.

The first General Assembly under the Commissioners was held on October 20, 1654, probably at Preston's house near Battletown in Calvert County on the Patuxent River.[2] We have no records of its debates, but possess forty-six brief laws passed at the session. The Assembly seems to have consisted of one house, wherein Fuller had the titular first place and Preston was Speaker. Nine Commissioners and seven other men were present, and three of the latter were afterwards named as Commissioners.[3] Thomas Hatton and

[1] See article upon Preston by Samuel Troth in Pennsylvania Magazine of History and Biography, XVI, 207. He probably came to Virginia in 1636, æt. about 22, and to Maryland in 1650, with three sons and two daughters. He was later a Quaker and died in 1666. His son Richard was an Assemblyman from Calvert and Dorchester, and his grandson Samuel removed to Philadelphia.

[2] Glenn, Some Colonial Mansions and Those Who Lived in Them, II, 350. Bozman (II, 507) does not know where Preston lived.

[3] 1 Md. Arch., Ass., 339 ff. All the Commissioners were present but John Lawson. Sampson Waring, James Berry, and Wm. Ewen, who were later Commissioners, were present, as were Thomas Hinson, Joseph Weekes, and Turner and Wade. This is the first Assembly in which members sat for counties.

Job Chandler, who had been chosen burgesses for the county of "St. Mary's and Potomac River," as the Puritans called it, came before the Assembly and refused to sit, because of their oath to Baltimore and for other reasons expressed in a writing, now lost, which they left with Durand, the Secretary. A new writ was issued to the sheriff for a second choice of burgesses, and he shortly returned as unanimously elected Arthur Turner and John Wade, who duly qualified. As Roman Catholics had been disqualified, and as it is probable that some of the Proprietary's adherents did not vote, the unanimity must have been that of a small number of electors. Hatton and Chandler and their constituents were not allowed to go without paying for their loyalty to Baltimore, for the Assembly voted that the charge of the new election should be borne by the County of "Mary's and Potomac," and that, if the fault was in Hatton and Chandler, rather than in the electors, the latter had liberty granted to recover the charge from the former.[1] That means, as Bozman wisely conjectures, that if the two gentlemen, before their election, informed their electors that they could not serve, the expense fell on the county, otherwise it fell on Hatton and Chandler, as caused by their default.

The first law passed[2] was an act of recognition, "in the name of his highness the Lord Protector," acknowledging and freely submitting to the reducing of the Province by Bennett and Claiborne and to the government as it was now settled by commission granted the ten Commissioners. No power from Baltimore or any other should be permitted to alter the government so settled, unless it came from the supreme authority of the Commonwealth, exercised by the Protector. All the inhabitants of the Province were required to declare that they accepted the present government and would be subject thereto. Any one who denied this government, or dared either in words to "traduce, villify or

[1] 1 Md. Arch., Ass., 354; Bozman, II, 309.
[2] Bozman, II, 511.

scandalize" it or by action to oppose it, should be accounted an offender against the Protector of the Province. So too any one who published any commission, proclamation, or writ not from the supreme authority above named should be accounted an offender against the public peace.

The Assembly's mind was that any free subject of the Commonwealth[1] should have liberty of petition for redress of grievances and also of propounding things in an orderly manner necessary for the public good. This early suggestion of a popular initiative was doubtless a reminiscence of the early Assemblies, to which all freemen could come.

Next the body turned its attention to religion, and throwing aside Baltimore's enlightened policy of toleration, decreed that none who professed the "Popish religion" could be protected by the laws, but were restrained from the exercise of their faith. Liberty of religion was not to be "extended to popery or prelacy, nor to such as, under the profession of Christ, hold forth and practice licentiousness."[2] Other Christians, though differing in judgment from the Puritans' religion, should be protected in the profession of their faith so long as they "abuse not this liberty to the injury of others." The narrowness of this statute, passed by men who came to Maryland to escape religious persecution, merits all the obloquy which has been cast upon it. Bozman calls our attention to the fact that this act is copied from the instrument of government by which Cromwell had been installed as Protector on December 16, 1653. The gratitude which should have been owed Baltimore was forgotten in religious antipathy. The Assembly also took the pains to repeal the famous act of 1649 concerning religion.[3]

The revolution in the Province is also shown in two other acts,[4] one of which declared null Baltimore's proclamation

[1] Why is not the word Province used? 1 Md. Arch., Ass., 340; Bozman, II, 511.
[2] 1 Md. Arch., Ass., 341; Bozman, II, 512.
[3] 1 Md. Arch., Ass., 351.
[4] 1 Md. Arch., Ass., 354; Bozman, II, 515. Claiborne's attainder

commanding that the oath of fidelity be taken to him, while the other ordered that all suits pending in the courts before the "reducement of the Province" should not be affected by that event. This act showed that the Puritans had the honesty not to try to avoid the payment of old debts. The bugbear of the oath of fidelity appears in another law "concerning rights of land." This statute stated that the oath of fealty, required by Baltimore's Conditions of Plantation, is contrary to the laws of England, so that those who have rights to land cannot, without collusion and deceit, apply for patents to the Proprietary's officers.[1] To correct this, "all those, that transport themselves or others into this Province" are decreed to "have a right to land by virtue of their transportation." This right may be entered in the county court, and the owner may also enter a caveat for the particular tract of land which he may take up, which caveat shall take the place of a patent.

Concerning the government of the Province, several statutes were passed. Assemblies[2] should be summoned, as in England, at least once every three years. To insure the election and meeting of the Assembly, the law provided that the first Commissioner should issue the writs, and if he failed, the next in commission. If no Commissioner acted, the sheriff should issue the writs, and if he failed, the county courts should assemble the people.[3] The name of Anne Arundel County was changed to Providence, and the land between it and St. Mary's was made Patuxent County.[4] St. Mary's name was shorn of the Saint, and authority was given to its inhabitants and to those of the Isle of Kent to set up county courts.[5]

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was repealed, as were the laws concerning attachments and executions, deserted plantations, seating St. Inigoes fort, and mutinies and seditious speeches.

[1] 1 Md. Arch., Ass., 348; Bozman, II, 514.

[2] The records are to be kept at Mr. Richard Preston's, 1 Md. Arch., Ass., 347.

[3] 1 Md. Arch., Ass., 341, 345.

[4] 1 Md. Arch., Ass., 347.

[5] The secretary's and sheriff's fees are continued, 1 Md. Arch., Ass., 350, and Mr. Robert Brooke's petition for payment of his expenses is allowed, 354. The levy is given in detail, 355.

Taxes are to be laid as follows: a poll tax on every person, bond or free, negro, Indian, or European, except white women servants, and a tax of an aliquot part of the poll tax on each cow, horse, mule, or one hundred acres of land. The tenant for years shall not pay the land tax if the landlord lives in the county; but, if the landlord reside elsewhere, he shall pay the tax and may deduct it from his rent.[1] Registries of births, marriages, and deaths, and standards of weights and measures are to be kept by the clerk of the courts. The entrance and clearance of vessels are required.[2] Several of the laws deal with the aborigines, treating of war with Indians, stealing of friendly Indians, selling guns, powder, or shot to Indians, and the prohibition of Indians from trespassing on the settlers' lands, while a committee of nine residents of the Province was appointed to treat with Indians.[3]

The administration of estates,[4] the relation of servants and their masters,[5] the fugitive indentured servants,[6] a requirement that every taxable person planting tobacco plant also two acres of corn and place a strong fence four and one half feet high about the grain,[7] the offer of a reward for the killing of wolves,[8] the shutting out of foreigners from the Provincial trade,[9] the prohibition of engrossing and the regulation of accounts,[10] the ordering of the militia,[11] the striking of public officers,[12]—these are some of the subjects on which the Assembly legislated. The Puritanism of the members is seen in acts concerning drunkenness, swearing, theft, adultery and fornication, false reports,

[1] 1 Md. Arch., Ass., 342, 346.
[2] 1 Md. Arch., Ass., 345.
[3] 1 Md. Arch., Ass., 345, 346, 348, 349.
[4] 1 Md. Arch., Ass., 353, 354.
[5] 1 Md. Arch., Ass., 352.
[6] 1 Md. Arch., Ass., 348.
[7] 1 Md. Arch., Ass., 346, 349.
[8] 1 Md. Arch., Ass., 346.
[9] 1 Md. Arch., Ass., 351.
[10] 1 Md. Arch., Ass., 346, 351, 352.
[11] 1 Md. Arch., Ass., 347.
[12] 1 Md. Arch., Ass., 350.

slandering and talebearing, and the sanctity of the "Sabbath day;"[1] these acts, however, judged by the standard of the times, are not particularly severe.

IX. The Maryland Civil War, 1654.

After the overthrow of the Proprietary government, the Puritans were anxious to justify themselves to the English people, and published in 1655 an answer to "The Lord Baltimore's Case," published two years previously, to which we have already referred. Like the pamphlet to which it is a reply, it is anonymous. It bears the name of "Virginia and Maryland, or The Lord Baltamore's [sic] printed Case Uncased and Answered."[2] It is a rather disordered work, written as soon as the news of the battle of the Severn reached England, and containing very valuable information as to events in 1654.

"Virginia and Maryland" was followed up by two other pamphlets written to justify the men of Providence, both

[1] 1 Md. Arch., Ass., 342–345. See Bozman, II, 513. John Sterman (3 Md. Arch., Coun., 313) petitioned the Assembly to have remitted a penalty imposed upon him and his father at Cornwallis's suit in the Provincial Court, because of the Stermans' acts in the time of Ingle's seizure of the Province, but the petition was not granted.

[2] Virginia and Maryland, or The Lord Baltamore's printed Case Uncased and Answered. Shewing, the illegality of his Patent and usurpation of Royal Jurisdiction and Dominion there. With, The Injustice and Tyranny practised in the Government, against the Laws and Liberties of the English Nation, and the just Right and Interest of the Adventurers and Planters. Also A short Relation of the Papists' late Rebellion against the Government of his Highness the Lord Protector, to which they were reduced by the Parliament's Commissioners; but since revolting, and by Lord Baltamore's instructions caused to assault the Protestants there in their Plantations, were by a far lesser number repulsed, some slain, and all the rest taken Prisoners. To which is added, A brief Account of the Commissioners' proceedings in the reducing of Maryland, with the Grounds and Reason thereof; the Commission and Instructions by which they acted; the Report of the Committee of the Navy, concerning that Province; and some other Papers and Passages relating thereunto; together with the Copy of a Writing under the Lord Baltamore's Hand and Seal, 1644, discovering his Practices, with the King at Oxford against the Parliament, concerning the Londoners and others trading in Virginia. 1655.

Reprinted in Force, Tracts and Other Papers, vol. II, no. 9, and in Hall, Narratives of Early Maryland, p. 181.

of which were issued in 1655. The former of these is written by Captain Roger Heamans of the *Golden Lion,* and is entitled "An Additional Brief Narrative of a late bloody design against the Protestants in Anne Arundel County."[1] It is worth noting that he describes the Province as "Maryland in the Country of Virginia." Though Heamans called himself "an eye witness," the Puritans were not content with his account as the official one, and another tract appeared, "published for Leonard Strong, agent for the people of Providence," and probably written by Strong. To this pamphlet the name was given of "Babylon's Fall in Maryland."[2] Heamans's work is almost entirely confined to the battle of the Severn and is the fullest account we have of the conflict. "Babylon's Fall" is an able and comprehensive review of the history of the Puritan party in Maryland from their first arrival in the Province during 1649, and contains an important narrative of the battle, but is a specious work, to be used with caution.

The two pamphlets issued by the Puritans gave rise to as many replies. John Hammond[3] had lived in Virginia for seventeen years, until 1652, when he sat in the Assembly as burgess from the Isle of Wight, and was expelled from the colony as "a scandalous person and a frequent disturber of the peace of the country," i. e., one opposed to the prevailing Puritan party. He went to Maryland, and now took on himself to reply to the "Additional Brief Nar-

[1] An Additional Brief *Narrative* of a late bloody design against the Protestants in Anne Arundel County Severn in Maryland in the Country of Virginia as also of the Extraordinary deliverance of those poor oppressed people Set forth by Roger Heamans, commander of the ship Golden Lyon—an eye witness there. 1655. Reprinted in Maryland Historical Magazine, IV, 140.

[2] Babylon's Fall in Maryland a fair Warning to Lord Baltamore or a Relation of an Assault made by divers Papists and Popish Officers of the Lord Baltamore's against the Protestants in Maryland; to whom God gave a great Victory against a greater force of Souldiers and armed Men, who came to destroy them. Published by Leonard Strong, Agent for the people of Providence in Maryland. Printed for the Author 1655. Reprinted in Maryland Historical Magazine, III, 228, and in Hall, 231.

[3] Neill, Terra Mariae, 127.

rative" in a partisan tract entitled "Hammond versus Heamans."[1]

The more official pamphlet, published by Strong, had a more official answer from "John Langford, Gentleman, servant to the Lord Baltimore," whom we have known as Surveyor in Maryland. Langford's tract is called "A Just and Cleere Refutation of a false and scandalous Pamphlet, Entituled Babylon's Fall in Maryland."[2] He states that for more than twenty years he has been acquainted with and employed by Baltimore, in Maryland and in England, on affairs concerning the Province. His work is a calm, dispassionate presentation of Baltimore's case down to July, 1654, especially defending the oath of fidelity. He prints the toleration act of 1649, intended "to prevent any disgusts between those of different judgments in religion," and defends both the reference to the Blessed Virgin Mary, by stating that "all Scripture calls her blessed," and the clause in the oath of officers allowing religious freedom to Roman Catholics, as a reasonable demand from Protestant officers by a Roman Catholic Proprietary. The Puritans are not

[1] Hammond versus Heamans Or An Answer To an audacious Pamphlet, published by an impudent and ridiculous Fellow, named Roger Heamans, Calling himself Commander of the Ship Golden Lion, wherein he endeavours by lies and holy expressions, to colour over his murthers and treacheries committed in the Province of Maryland, to the utter ruine of that florishing Plantation; Having for a great sum sold himself to proceed in those cruelties; it being altogether answered out of the abstract of credible oaths taken here in England. In which is published His Highness absolute (though neglected) Command to Richard Bennet, Esqr. late Governor of Va., and all others not to disturbe the Lord Baltamore's Plantation in Maryland. By John Hammond, a Sufferer in these Calamities. London, n. d.

This pamphlet is reprinted in Maryland Historical Magazine, IV, 236.

[2] A Just and Cleere Refutation of a false and scandalous Pamphlet, Entituled Babylon's Fall in Maryland &c and a true discovery of certaine strange and inhumane proceedings of some ungratefull people in Maryland toward those who formerly preserved them in time of their greatest distresse. To which is added a Law in Maryland concerning Religion, and a Declaration concerning the same. By John Langford, Gentleman, servant to the Lord Baltamore. London 1655.

This pamphlet is reprinted in Maryland Historical Magazine, IV, 42, and in Hall, 247.

contented with freedom for themselves of conscience, person, and estate, but wish the liberty to debar others of the like freedom, that they may domineer and do what they please.

The bibliography of the conflict is completed by a second pamphlet from Hammond's pen entitled "Leah and Rachel, or the Two Fruitful Sisters; Virginia, and Mary-Land,"[1] in which he not only defends the Proprietary party in the past, but also endeavors to strengthen it by inviting new immigrants into the Province. He dedicates the pamphlet to James Williamson of Rappahannock and to Stone, "desirous that the whole country may note . . . that I dare in England own and entitle him my governor, that in Maryland I fled for submitting to." He tells us that for over two years he enjoyed life in Maryland, "but was enforced by reason of her unnatural disturbances to leave her weeping, . . . yet will I never wholly forsake or be beaten off from her." "Twice," he wrote, "hath she been deflowered by her own inhabitants, stript, shorn, & made deformed, yet such a natural fertility and comeliness doth she retain that she cannot but be loved, but be pitied." In his endeavor to attract settlers to the Province, he states that "it is (not an island as is reported) but is part of that main adjoining to Virginia, only separated or parted from Virginia by a river of 10 miles broad, called Potomac River, the commodities and manner of living as in Virginia, the soil somewhat more temperate, as being more northerly. Many stately and navigable rivers are contained in it, plentifully stored with wholesome springs, a rich and pleasant soil and so that its extraordinary goodness hath made it rather desired than envied, which hath been fatal to her (as beauty is often times to those that are endued with it)."

Moses Coit Tyler in his History of American Literature

[1] Leah and Rachel, or the Two Fruitful Sisters; Virginia and Mary-Land: Their present condition, Impartially stated and related with A Removal of such Imputations as are scandalously cast on those Countries, whereby many deceived Souls, chose rather to Beg, Steal, rot in Prison and come to shamefull deaths then to better their being by going thither, wherein is plenty of all things necessary for Humane subsistance. By John Hammond. London 1656. Reprinted in Force, vol. III, no. 14, and in Hall, 277.

calls this pamphlet "an extremely vigorous and sprightly tract," and speaks thus of its author: "He was a man of strong sense; he was very much in earnest; and he spoke his mind in a language so manly, frank, and vital, that even its uncouthness cannot take away the interest with which we stop and listen to him." Of "this clear headed and forceful American," Tyler further writes: "Here, thus early in our studies do we catch in American writings that new note of hope and of help for humanity in distress and of a rugged personal independence, which almost from the hour of our first settlements in this land, America began to send back, with unveiled exultation to Europe. . . . For the first time, perhaps, in the long experience of mankind on this planet, was then proclaimed this strong and jocund creed; and it was proclaimed first, as it has been since proclaimed continually in American literature."[1]

Hammond's reply to Heamans is characterized by heated invective. For example, he speaks of the Puritans as "inhuman, ungrateful, and blood sucking sectaries." He will answer the imbecility and villainy of Heamans, who is a "knave and a notorious offender." He had a "disordered ship," a "mutinous and quarrelsome company," who indulged in "drunken bouts and drawing of swords." In their insolency the seamen would sell commodities, and lighting on greater prices, repossessed themselves of the goods, scoffing at any pretence of law, and saying that their ship was of force enough to awe the whole country. They even robbed the planters' houses. Hammond tells us that he has written of the conditions under the tyranny of Bennett and Claiborne, but defers publishing this work.

From these five pamphlets we obtain practically all our knowledge of that battle which overthrew Baltimore's power and definitely wrested the Province from his hands for a time, and any narrative of these stirring events must needs be woven from the information they contain, with no help of importance from the Provincial records.

[1] I, 60–65.

In November, 1654, Baltimore wrote Stone chiding him for his cowardice,[1] and told him that another governor would be appointed, unless he took vigorous action. About this time came also a vessel, commanded by Captain Samuel Tilghman, which bore a letter commending Dr. Luke Barber, written by Cromwell, in whose household Barber had been, and addressed to "Capt. Stone, Governor of Maryland." This title greatly encouraged the Proprietary party, as a manifest sign of the Protector's approval, so that, as the writer of "Virginia and Maryland" alleged, they "disarmed and plundered those that would not accept" the oath to the Proprietary. Eltonhead also came from England with news that Cromwell had neither taken Baltimore's patent from him nor his land, so that Stone now thought he might act by the contents of his former commission. Some of the Puritans stood on their guard and demanded of Stone that he show a commission from the Protector, before they would submit. He imprisoned their messengers, and with greater numbers assaulting them at their houses, abused them with opprobrious epithets.

The account given by the Proprietary author[2] is that, as Cromwell under his hand and signet had owned Stone's authority by addressing him as Governor, he endeavored to reassume the government, fetched away the records, proclaimed peace to all not obstinate, and favorably received many submissioners, who returned with a seeming joy. St. Mary's and Calvert Counties submitted. Anne Arundel and Kent must be subdued.

In the end of January there came to Maryland not only the ship *Golden Fortune,* Captain Samuel Tilghman, to which we have referred, but also the *Golden Lion,* Captain Roger Heamans, and these two vessels played an important part in the struggle. Tilghman was a warm supporter of the Proprietary cause, and when reproved by Captain John Smith, the Puritan sheriff, for addressing Stone as Governor, replied: "I must and shall own him and no other

[1] Virginia and Maryland; Bozman, II, 517 ff.; see 698.
[2] Hammond, Leah and Rachel.

for Governor of these parts. For, seeing my Lord Protector so styles him and by that title writes to him, I neither can nor dare call him otherwise and his example is my warrant." Smith brought news of this to Fuller, and they entered into treaty with Heamans and his ship, as Hammond alleges.[1]

Shortly after the arrival of the *Golden Fortune,* Stone sent Hammond unarmed with three or four oarsmen in a boat to Patuxent to take the Provincial records from Preston's house. While on that expedition, he saw a letter from Heamans to Preston, promising the use of his ship, ammunition, and men to the Puritans. This was the "first discovery" of danger to Stone, before he had a man in arms.[2] Hammond boasts that, unarmed, he later issued Stone's proclamation of pardon in Patuxent and put in office a new commander, in face of the whole county, who, as people overjoyed, acknowledged the Lord Proprietor as supreme lord and were pardoned.

The Puritans alleged that, when Hammond seized the records, threatening speeches were used, such as "We will have the government and hang, for the terror of others, some of the Commissioners." There were then sent from Providence two "messengers of quality and trust" to Stone, "in a way of peace and love," asking by what power he took the records.[3] Stone, in "much wrath and fury," said, "I will show no power—I acted by a power from the Lord Baltimore and the Lord Protector confirmed Baltimore's power." "If so, sir," said one of the messengers, "if it be confirmed, let that appear and it will satisfy." "Confirmed," said Stone, "I'll confirm it," and sent the messenger home.

After Hammond proclaimed Stone's intention "to use no

[1] Hammond, Hammond versus Heamans.

[2] In Leah and Rachel, Hammond claims that Heamans had, Judas-like, promised to be instrumental to the Governor, and that his perfidy was found out only at the time of the battle. Hammond is not fully trustworthy. Barber says that the Puritans hired Heamans and paid him.

[3] Strong, Babylon's Fall.

hostile way," the latter sent twenty men in arms, under Eltonhead and Fendall, who beset and entered Preston's house, to surprise him, as the Puritans said, or more probably to search for arms. He was away, so they ransacked the house, taking therefrom guns, swords, and ammunition. They carried away also John Sutton,[1] who had been appointed by the Assembly "to attend the Records for any that should have occasion to use them, either for search or copy." They also searched Lieutenant Peter Johnson's and other houses, and when asked by what power they so acted, they clapped their hands on their swords and said, "Here is a commission."

On March 5 from Providence there was sent a "dignified, sober missive"[2] to Stone, signed by Fuller, Durand, Preston, Strong, and Ewing, asking why he seized the records, and requiring him, in the name of Cromwell, that for the peace and welfare of the Province he make known to them and the free inhabitants of the Province, in an orderly and legal way, if he had any "higher power than is here established by the Commissioners of the Commonwealth." The Puritan leaders stated that they "affect not preëminence, but had much rather be governed ourselves by the laws of God and lawful authority of him set over us, than that we ourselves should be in an employment the nature whereof in these times is above our abilities and those that are far more able." They adjure him to take "care that the country be not brought to ruin and desolation, whilst you think to heal the breaches thereof." The letter is so finely expressed and of such excellent temper that we cannot but feel that Baltimore was badly served by Stone in not giving courteous answer. In fact, Stone was in a difficult position, and he seems not to have shown much tact or skill in managing the difficulties which surrounded him. The request that he show his right to take up the governorship, after resigning the office in the preceding summer, was on the face of it a

[1] He was kept prisoner for twenty days.
[2] Printed in Heamans, An Additional Brief Narrative.

reasonable one, and to show the superscription of a letter was hardly a satisfactory reply to the request.

In March, Stone sent Henry Coursey and Luke Barber to Anne Arundel with a proclamation[1] summoning the people to yield obedience to Baltimore's officers under the Lord Protector. The people were found in arms, and Fuller would not permit Coursey to read the proclamation, which contained a statement that Stone wished to reclaim them by fair means. He dismissed the envoys, but before they could get away, ordered them held as prisoners, so that Stone received no reply. He forthwith marched against the Puritans with his men, commanding them under pain of death to do no plunder and not to fire the first gun if they met any of the Anne Arundel men.

Let us now hear what Captain Heamans tells of his movements.[2] He first anchored the *Golden Lion* in the Patuxent. While in that river, on January 31 a boat containing Stone and about four other persons came to the vessel. Heamans called the company to man the ship's side to accommodate Stone's coming on board, after which Heamans called for wine and drank to him as Governor Stone. This may have been before Stone saw the Protector's letter, so Heamans may have written truly that Stone said: "I have formerly been governor, but am not so now. The governor at present is one Capt. Fuller, a gentleman lately settled by the Commissioners of Parliament and now at Severn."[3] Heamans said that he heard nothing of any difference or hostile preparation[4] while there, and on February

[1] Hammond, Hammond versus Heamans. Strong, in Babylon's Fall, says that they were permitted to read the proclamation and then were dismissed, and places the embassy just before the battle, after Stone's march. Bozman (II, 520) calls attention to the fitness of Barber for the embassy, as a neutral person and one in the confidence of the Protector. Langford, A Just and Cleere Refutation.

[2] Heamans, An Additional Brief Narrative.

[3] Hammond, in Hammond versus Heamans, quibbles that Stone could not have said this, as Fuller was only one of the Commissioners. True, but popularly he was doubtless known as Governor.

[4] Hammond denies Heamans's statement as to his lack of knowledge of any difference, saying that on Heamans's ship and in Hammond's hearing Stone and Hatton had words with Preston, complaining of

15 set sail for Severn, where he arrived late at night. The next morning he went ashore and paid his respects to Fuller. Heamans continued trading there for a month, when he left the ship in the hands of his mate and went to Rhode River, "7 leagues distant," to procure goods. He was soon recalled by a message from Fuller, requiring him "presently" to attend him and with his men to repair to the ship. As he approached the *Golden Lion* he heard the firing of a piece of her ordnance, and when he came on board, found Fuller there and was told that the firing was by his orders. Fuller then said to Heamans: "I have received certain intelligence that Stone, with a party of Roman Catholics, malignants and disaffected persons, who had called to their assistance a great number of heathen, were in arms and that they forced along with them what others they could not by favor persuade, plundering all that refuse to assist them. They privately design the destruction of the Governor and all the Protestants of Severn and to destroy men, women, and children that shall not submit to their wicked design. This is under pretence of bringing into subjection to the Lord Proprietary us, whom they call those factious people in the county of Anne Arundel. They do not own, in the least, the Lord Protector's power. The design is also against you and your ship and company, if they will not assist Stone, to fire your ship while riding anchor. This is to be effected by Abraham Hely,[1] a seaman who ran away from the *Golden Lion* at Patuxent. This design is so settled that Stone and his soldiery are ready to march. The sudden news of such horrid treachery has put the poor inhabitants in a lamentable condition, former experience having shown them the malice of their adversaries against all that own the way of God in truth. May the trembling women and children come on board your ship?"

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the Puritans' "injurious assuming of government" and taking of the records, and threatening that, unless they returned them again, the Proprietary party would compel them to go away (ibid.).

[1] Hammond says that Hely is of "honest temper" and ran away on account of Heamans's "fantastic domineerings" (ibid.).

Whether Heamans has exaggerated Fuller's speech, or whether the latter himself exaggerated conditions wilfully, or was so terrified as to lose his head, we know not. Heamans at once granted Fuller's request, and then the Commissioners drafted a letter which was signed by Durand and sent Stone, in the ship's wherry, demanding his power and the ground of his proceeding, and proposing to yield to him if he would govern them "so as we may enjoy the liberties of English subjects," allow them to "remain indemnified in respects of our engagements and all former acts relating to the reducement of government, and permit those minded to depart the Province to do so, without any prejudice to themselves or their estate." If Stone will not grant these terms, the Puritans "are resolved to commit themselves into the hands of God and rather die like men than be made slaves."

At the Cliffs the wherry met Stone with his men, some marching by land and others proceeding in sloops and boats. In a rage Stone took away the wherry and commanded the messengers to be taken into guard. Two[1] of them escaped, however, came to Severn, and told Fuller what had occurred. The latter thereupon, on March 22, wrote to Heamans commanding him, with ship and men, to be "for the service of the Lord Protector and Commonwealth of England, in assisting to your power the people of Providence" against Baltimore's men. On the next day Fuller directed Heamans to seize and detain any vessels arriving there to disturb the government here settled. By Fuller's commands, these orders were affixed to the mast of the *Golden Lion* and Heamans agreed to obey them. Stone had mustered two hundred or two hundred and fifty men in arms at Eltonhead's house, and Eltonhead and Fendall sent up by night several boats with armed men to Patuxent, where they forced many to go with them, took all the guns, ammunition, and provision they could find, and are said to have done some plundering.[2] At Herring Creek the advancing forces

[1] Strong, in Babylon's Fall, says that three escaped.
[2] Strong, Babylon's Fall.

apprehended a Commissioner and forced another man of quality to fly for his life, threatening to hang him up at his own door. Not finding him at home, they frightened his wife and took what ammunition and provisions they could find.[1]

On the evening of the twenty-third a boat came to the *Golden Lion* bearing a messenger and a letter from Stone to Heamans, desiring him not to assist the people of Severn against Baltimore's government.[2] Heamans took the letter ashore to Fuller and his council, who told him that it was of no great weight, and that he should answer it as he thought best and send away the messenger. Heamans replied, stating that at Patuxent Stone had disclaimed authority from the Protector and must now show it in order to have Heamans's service.[3] Unless he sees such authority, Heamans will obey "the government settled on Capt. Fuller by the supreme power of England and since established by the Lord Protector." One Richard Owen, a merchant aboard the *Golden Lion,* wrote to Stone defending Heamans's position, urging that Stone show any commission he might have from Cromwell, and signing himself "your friend and kinsman."

Heamans now had received most of his freight on board the *Golden Lion,* and on the morning of March 24 went ashore to tell Fuller that, "in pursuance of his employers trust, he intended to get his water aboard and so depart the port." Fuller and his Commissioners, knowing that Stone's army was near at hand, sent an especial warrant for Heamans and gave him strict charge, in the Protector's name, not to depart without Fuller's order. This document, while Heamans was ashore, was sent on board the *Golden Lion* and nailed to the mast. On his return to the ship,

[1] Strong, in Babylon's Fall, states that the women, bereft of arms and men, feared lest the Indians should attack them, and that the Indians beset houses after the fight, killed two men, and took some prisoners.

[2] Hammond, in Hammond versus Heamans, gives the alleged letter.

[3] Heamans, in An Additional Brief Narrative, gives text of Heamans's reply. He showed Stone's messenger Fuller's orders.

Heamans, whose sympathies were warmly with the Puritans, debated with his officers and company, and found them unanimously of the opinion that they ought to "relieve those poor distressed people." Therefore, he resolved not to leave the port till "God put an end to the restless condition of their brethren and suffered their deliverance to be wrought." That afternoon Heamans again went ashore to have his bills of lading prepared, and he was told that the enemy was entering the mouth of the harbor with a great number of sloops and boats full of armed men, with drums and colors. He was directed to return to the ship with two of the Commissioners and there to obey their orders.

"In the very shutting up of the daylight,"[1] on March 24, a company of sloops and boats was descried making toward the *Golden Lion,* whereupon the Commissioners on board and the crew would have "made shot" at them; but Heamans commanded the men to forbear, and going to the poop in the stern, hailed the boats several times. No answer was made, and he then charged them not to come nearer the ship. They kept on rowing, and were come within shot of the ship when his mates and the company, having had information of the threatenings of Stone's men, resolved to fire without Heamans's consent, rather than hazard all. He then ordered them to fire a gun at random to divert the course of Stone's fleet, which was done, but the latter "kept course with the ship," and took no notice of the warning. Heamans then commanded that the ordnance should be fired at the boats.

Another shot was fired, aimed near the boats,[2] and a messenger came toward the *Golden Lion* to say that Stone thought Heamans had been satisfied. To this Heamans replied: "Satisfied with what? I never saw any power Capt. Stone had, to do as he hath done, but the superscription of

[1] Strong, in Babylon's Fall, says that Fuller told Heamans to command them aboard by ordnance, but Stone's forces with great noise rejected the warning.

[2] Strong, Babylon's Fall. Hammond, in Leah and Rachel, says that the messengers were retained. Heamans, in An Additional Brief Narrative, does not speak of them.

a letter. I must and will appear for these men in a good cause." Shortly afterwards the men in the boats altered their course and rowed toward the creek, calling the ship's company "rogues, roundheads, dogs," and threatening to fire the vessel in the morning. The boats ran into the creek now known as Spa or Acton Creek that night, and landed out of reach of the ship.[1] In the morning Fuller ordered a small vessel, with two pieces of ordnance, commanded by Captain Cutts of New England, to lie in the mouth of the creek and so keep the enemy's craft from coming out.

At daybreak on the morning of Sunday, March 25, the anniversary of Leonard Calvert's first landing in Maryland, Stone and his whole body of about two hundred men[2] appeared, drawn out and coming toward the waterside, marching with drums beating and the black and yellow colors flying, as Baltimore had appointed. Heamans noted that there was no token of subjection to the Protector Cromwell in the Proprietary army. Heamans then fired at them, killed one of their number, and forced them to march further off into the neck of land. When Fuller saw Stone's forces, "after earnest seeking of God and laying" the Puritans' "innocence at His feet," he resolved, with "humble cheerfulness, to go over to the enemy." So he sent to the *Golden Lion* for the ship's English colors, and fixing them to a half pike, he went over the river some six miles distant from the enemy, leading something over one hundred men from Anne Arundel and Kent, rather more than half of Stone's force, without music, for he had no drum. He probably went from Greenberry Point by boat across the Severn, then landing, he marched around the head of Spa Creek to the present Horn Point, if Bozman and J. W. Randall are right as to the site of the battle.[3] Arriving at

[1] Chalmers (An Introduction to the History of the Revolt of the American Colonies, I, 80) says that Heamans's treachery compelled Stone to land on a narrow neck.

[2] Puritans say two hundred and fifty, Hammond, in Leah and Rachel, says one hundred and thirty.

[3] Hammond, in Leah and Rachel, says that one hundred and seventy men were with Fuller. D. R. Randall (A Puritan Colony,

an open place near where Stone and his men stood, Fuller pitched his colors, for he thought that the Proprietary forces might come to a parley and prevent bloodshed when they saw the standard of the Commonwealth. But Stone's sentry fired the alarm gun, the army appeared in order, and made several shots at the setting down of the colors, killing two of Fuller's men.[1] Then Fuller gave the word, "In the name of God fall on, God is our strength," and with it he gave fire. The Governor's men were on a neck of land, with the *Golden Lion* on one side and the Anne Arundel men coming in upon them from the other, thus cutting off retreat.

It was the feast of the Virgin Mary, and Stone's company, largely from St. Mary's, engaged with great boldness, shouting, "Hey for St. Mary's," to which one narrator adds, "Hey for our wives." Some of the rougher fellows are said to have changed the latter cry to "Hey for two wives," as if they expected the rape of women should follow upon victory, as it had so recently in the battles of the German Thirty Years' War. The dispute was short but sharp, and with true Puritan reference to Old Testament language, the Providence men said that in their victory "God confounded Capt. Stone and his company before us." The Proprietary army "gave back and were so effectually charged home that they were all routed, turned their backs, threw down their arms, and begged mercy." A small company of Stone's men, after the first volley from "behind a fallen tree, galled Fuller and wounded divers of his men," but were soon beaten off. Thomas Hatton, the Secretary, and over twenty of the Proprietary army were slain;[2] many were wounded, among them Stone, who was shot in the shoulder and in "many places," and many were taken prisoners, leaving the "ground strewed with papist beads."[3] Hammond

39) says that the battle field was the present site of Annapolis. Another view, held by J. W. Randall (14) and Bozman (II, 523), places the battle field on Horn Point.

[1] Strong, in Babylon's Fall, says that one was killed.

[2] Heamans says that forty were slain.

[3] Virginia and Maryland.

maintains that Stone yielded on being promised quarter, but being in hold was threatened with immediate death unless he would write to the rest to take quarter, which they did upon his request. The victory seemed, to Heamans and to the Puritans, an "unparalleled mercy." Notwithstanding the thickness of the woods, only four or five of Stone's followers finally escaped from the place which the exultant victors called the "Papish pound," as if the vanquished had been impounded there, while only three of Fuller's men were killed on the field and three others afterwards died of their wounds.[1] The Puritans had right to hold a "religious, humble and holy rejoicing." They had taken "all the arms bag and baggage," the boats and their stores, the pictures, crucifixes, and a great store of relics. In his despondency Stone said that he was cursed, and according to Heamans, took the defeat as a judgment upon him for his alliance with the Roman Catholics. Heamans said that, when he came ashore after the fight, the prisoners were in such fear that they durst not run away, though the poor tired people slept who were keeping the door of the house used as a prison.

After the surrender,[2] Stone and most of the prisoners were transported over the river to the fort, where they were kept prisoners for three days. Then a council of war was assembled with the membership of Fuller, William Burgess,[3] Richard Ewens, Leonard Strong, Durand, Heamans, John Brown, John Cutts, Richard Smith, Thomas Thomas, Thomas Bestone, Samson Warren or Waring, Thomas Meares, and Ralph Crouch, and this council condemned to death practically all of the Proprietary Councilors and several of the lesser men of Baltimore's party, namely, Stone, Colonel John Price, Major Job Chandler, William Eltonhead,[4] Robert Clarke, Captain Nicholas Gwyther, Wil-

[1] Strong, in Babylon's Fall, says that two died of wounds and two were killed.
[2] Hammond, Hammond versus Heamans.
[3] Davis, 70.
[4] Neill (Virginia Carolorum, 121, 254, 410, 421) says that Elton-

liam Evans, Captain William Lewis, John Leggat, and John Pedro, "a German which did live with Mr. Eltonhead." At the request of the soldiers and of the women several were spared, some being saved as they were being led out to execution, but the Puritans' victory was sullied by the execution of Eltonhead, Lewis, Leggat, and Pedro. Eltonhead asked that he be allowed to appeal to Cromwell, but this was denied him. Why these four men were selected for execution we do not know. Fendall was also among those tried,[1] as was Hely, who "confessed that he was solicited by divers eminent officers" under Stone to set fire to or blow up the *Golden Lion,* for which service he should receive twenty thousand pounds of tobacco. Heamans then returned to England, stopping at Patuxent, where Hely ran away again. Leonard Strong probably went to England with Heamans, to publish the vindication of the Puritans' acts, and shortly afterwards died in his mother-country. Captain Tilghman, with the *Golden Fortune,* sailed in April, bringing with him to England a piteous letter to Baltimore from Virlinda Stone, Governor Stone's wife, who had not seen her husband since the battle, and an indignant one from Barber to the Lord Protector, in which he begged Cromwell to "condescend so low as to settle this country."[2] Hammond tells us that he was proscribed to die by the Puritans,[3] fled disguised to Virginia, and was brought to England in the ship *Crescent,* Captain Thorowgood, because of which service the dominant party amerced the captain for bringing away Virginians without a pass, though Hammond was a Marylander and not a Virginian.[4]

After the executions the common soldiers in Stone's army were sent away, but the officers and messengers were kept

head was a brother-in-law of Henry Corbyn, and that he probably married Jane, widow of Philip Taylor, who had been with Smith in the Pocomoke naval battle.

[1] Heamans, An Additional Brief Narrative.

[2] Bozman, II, 687.

[3] Hammond, in Hammond versus Heamans, says that Dr. Barber was imprisoned, fined, and nearly executed.

[4] Hammond, Leah and Rachel.

longer, and Coursey and Gwyther had imposed on them by the council of war an oath not to write to Baltimore about the matter.[1] The Puritan Commissioners followed with amercements and sequestrations of the property of some of the leading members of the Proprietary party, some of which we shall come upon in the proceedings of the Provincial Court, and the Province passed entirely out of the hands of Baltimore's officers for three years.

X. Conditions after the War.

On April 24, 1655, Captain Robert Sly was made by the Commissioners one of their body, to act as a full Councilor, but especially to see to the "administration of justice and government in the limits of St. Mary's and Potomac." With Sly, John Hatch and John Lawson were appointed to issue writs for the courts, and the two latter should also assist Sly in "repelling and suppressing any opposition against the present government, made by the Lord Baltimore or any other."[2] At the same time Captains John Smith and Peter Johnson were appointed as commanders of the military forces on both sides of Patuxent River, and Captain Smith was also appointed to take care of the sequestered estates of delinquents and to be muster master general for St. Mary's, Potomac, and Patuxent Counties.[3] Captain Sampson Waring was appointed commander of the forces residing on Herring Creek, and Captains John Sly and Richard Hodgkeys were appointed to command the militia in St. Mary's and Potomac River. Captain John Sly was appointed President of the St. Mary's County court, and six Commissioners were named with him, three of whom were of the quorum. The same number of Commissioners was appointed for Patuxent County court, and it was ordered that the jurisdiction of these courts should be limited to three thousand pounds of tobacco and £20 sterling and to such criminal actions "as

[1] Hammond, Hammond versus Heamans.
[2] 3 Md. Arch., Coun., 315.
[3] 3 Md. Arch., Coun., 315; 10 Md. Arch., Prov. Ct., 412, 413, 417.

extend not to life or member."[1] This organization was the result of the "late war raised by Capt. Stone and his complices," as the court styled it, and that war caused them much concern. William Evans, "convicted of high offence against the public," humbly acknowledged his offence, and was granted mercy, upon paying two thousand pounds of tobacco and cask "towards the public damage" caused by that war.[2] John Ashcombe claimed that he was in drink and "some way submitted to" Stone and his party, "through fear of mischief threatened by them," and was fined the same amount.[3] "The petitioners of Patuxent" were discharged, "by an act of favor past unto them," from all damage arising from their petition, doubtless against the Puritan regime, as they made "acknowledgment of their offence and free submission to the present government." Richard Collett had subscribed a "petition of dangerous contents," and so was "convicted of a scandalous offence against the government," and was banished from the Province. He must pay one thousand pounds of tobacco; but, if he should give sufficient security, he might remain until Christmas and settle his affairs as manager of a Virginian's plantation in Maryland.

Lieutenant Richard Banks and Thomas Tunnell, who had been in arms with Stone, cravenly pleaded that "they were misled by the protestation of Capt. Stone, who said he had power from the Lord Protector," pointed out that they "did surrender a fort upon the first summons," and were discharged "upon their submission."[4] In October, Banks was again summoned before the court and made to furnish security for his "good abearance to the public government and to all the people thereof," as he had "again done something to obstruct the choice of the Burgesses."

John Metcalf, the sheriff, had pressed a man's boat, by "Capt. Stone's appointment," in the "last insurrection," and

[1] 10 Md. Arch., Prov. Ct., 413.
[2] 10 Md. Arch., Prov. Ct., 413.
[3] 10 Md. Arch., Prov. Ct., 414.
[4] 10 Md. Arch., Prov. Ct., 414.

he was ordered to satisfy the man therefor.[1] The same man also complained that "he had several goods taken from him, when the soldier was last at Maryland," and he was authorized to have "examined by some magistrate three or four of that company, which he hath in suspicion."[2]

On May 21 a court met at Providence under "Capt. General" Fuller's presidency, and ordered, in accordance with the Act of Assembly, that Hatton, late Secretary, should have power of distress for the fees "due to him before the resignation of the Government by Capt. William Stone, July, 1654."[3]

Of the clergy in the colony we learn little during the Commonwealth. Father Copley died in 1652, and his successor, Father Lawrence Starkey,[4] who was born in 1606 and joined the Jesuits in 1636, died on February 19, 1657. In 1654 Father Francis Fitzherbert came, and wrote home of sickness on the vessel during the voyage, of the terrible storm which they experienced, causing the mariners to slay a little old woman suspected by them of sorcery, and of how all hands worked at the pumps to save the vessel.

After the battle of the Severn the Jesuits' houses were plundered and the fathers fled secretly to Virginia.[5] They had escaped "grievous dangers" and "great difficulties and straits," but they lived there in "a mean hut, low and depressed, not much unlike a cistern, having lost the stipend which they had expected from England," as the ship bearing it had been intercepted. They had not enough wine for the sacrament of the eucharist, and no servant, not even one to steer or row their boat. "Often over spacious and vast

[1] 10 Md. Arch., Prov. Ct., 416.
[2] 10 Md. Arch., Prov. Ct., 418.
[3] 10 Md. Arch., Prov. Ct., 549; Bozman, II, 525. Hatton was slain in the battle, and the vote was for his widow's benefit, 3 Md. Arch., Coun., 325.
[4] Neill, Founders of Maryland, 127; Shea, The Catholic Church in Colonial Days, 75; "Relatio Itineris in Marylandiam," Maryland Historical Society, Fund Publication no. 7, p. 90.
[5] "Relatio Itineris in Marylandiam," Maryland Historical Society, Fund Publication no. 7, p. 91. They reported that three of the four men shot in the battle were Roman Catholics.

rivers, one of them, alone and unaccompanied, passes and repasses long distances, with no other pilot directing his course than Divine Providence."

In 1650 there came to the Province one William Wilkinson, a clergyman of the Anglican church, a man about fifty years old, with his wife, three daughters, a stepdaughter, and two servants.[1] He engaged in trade to support his family.

We hear not much of Kent Island during these years. The county records show that as early as 1652 John Winchester was taking up land there with an agreement to plant it with apple, cherry, pear, and peach trees. This proof of the early fruit culture is confirmed by an affidavit made by John Dobb in 1653 that Thomas Lombard gave over an estate to Thomas Marsh in cherry time. In this latter year Hatton sent John Coursey or DeCourcy,[2] the first of his well-known line, to the island with a letter of introduction, and in 1655 we find that Thomas Hawkins sold a tract known as Westmoreland, comprising half of Popley's Island, and that William Leeds sold fifty acres cleared for seven thousand tobacco plants, a culture now abandoned in great part on the Eastern Shore.

Stone was not satisfied to submit to his overthrow, and sent[3] one William Watson a warrant to publish a proclamation and to read to the people and tender them for their signature a letter of submission to his government. There were other evidences that the Proprietary party was not dead. Thomas Arley, or Orley, about the close of September,[4] refused to give Henry Potter an assurance for property which Potter bought of Edward Hall, whose ad-

[1] Neill, Terra Mariae, 123, Founders of Maryland, 124. One daughter married Wm. Hatton and another Thos. Dent, both Protestants. Dent lived within the limits of the present District of Columbia. In 1672 Rev. Mr. Nicolet, of Salem, Mass., who had lived in Maryland, spoke of knowing five Protestants there, viz., Messrs. Dent, Hatton, Hill, Hanson, and Thorowgood.
See Davis, 153, for some questionable acts of Rev. Mr. Wilkinson.
[2] Davis, 114, 201.
[3] 10 Md. Arch., Prov. Ct., 434.
[4] 10 Md. Arch., Prov. Ct., 434, 438, 453.

ministrator Orley was, as "there is no law nor Government in Maryland." Potter's wife replied, "There is both law and government, if we will go to Patuxent for it," to which Orley answered: "Patuxent men do not grant true justice and, for Fuller, he durst not call a court. The Governor of Virginia sent order to the contrary and will order him for what he had done already." Orley seems formerly to have lived on the land sold, and by his lease was bound to leave housing and fencing tenantable.[1]

Though Baltimore's commission to Fendall to act as Governor of the Province was not signed until the summer of 1656, he had been openly acting "to the disturbance of the public peace" by assuming a power from Stone, though he had taken an oath to the "present government."[2] Fendall was charged with this, and did not satisfactorily traverse the charge, but "rather disowned the power of the Court." As he gave "just ground of suspicion of his dangerousness to the public peace of this Province" if he should enjoy his liberty, he was ordered to go "to the place from whence he came a prisoner and there abide in safe custody, until the matters of government in the Province of Maryland shall be further settled" by the English authorities, to which decree Fendall consented. Almost a year later, on September 24, 1656, he took oath in open court that he would not be "a disturber to this present government, till there be a full determination ended in England of all matters relating to this Government."[3]

Cromwell wrote to Bennett[4] from Whitehall on January 12, 1654/5, upbraiding him because, although the "differences between the Lord Baltimore and the inhabitants of Virginia, concerning the bounds by them respectively claimed," were as yet undecided by the Privy Council, Ben-

[1] 10 Md. Arch., Prov. Ct., 460, 467 (464, 469, 470, a jury trial in October, 1656, in which Orley won), 477.
[2] 10 Md. Arch., Prov. Ct., 427, 463.
[3] 10 Md. Arch., Prov. Ct., 463.
[4] Carlyle, Oliver Cromwell's Letters and Speeches, IV, 74; Andrews and Davenport, Guide to the Manuscript Material for the History of the United States to 1783, in the British Museum, 381; Rawlinson Ms. 43. f. 101.

nett had "gone into" Maryland and "countenanced some people there in opposing the Lord Baltimore's officers; whereby and with other forces from Virginia" Bennett had "much disturbed that Colony and people, to the endangering of tumults and much bloodshed there, if not timely prevented." Of this conduct Baltimore complained, as did "divers other persons of quality" in England, "who are engaged by great adventures in his interest," so Cromwell commanded Bennett and "all others deriving any authority from you" not to disturb "Baltimore, or his officers or people, in Maryland and to permit all things to remain as they were, before any disturbance or alteration made by you or by any other, upon pretence of authority from you; till the said differences above mentioned be determined by us here and we give further order therein." Bennett thereupon made further representations to Cromwell, and the Maryland Commissioners also wrote[1] Cromwell on June 29 giving their side of the case; so from Whitehall, on September 26, 1655, Cromwell wrote to the Commissioners of Maryland[2] that a mistake had arisen concerning the January letter, which was being interpreted as directing that a stop be "put to the proceedings of those Commissioners who were authorized to settle the civil government of Maryland." Cromwell wrote that this "was not at all intended, nor indeed asked by Baltimore and his friends," but Cromwell wished to "prevent and forbid any force or violence to be offered" by either Virginia or Maryland to the other "upon the differences concerning their bounds," which differences were being considered by the Privy Council.

XI. Josias Fendall, Governor, 1656.

A year later Baltimore thought that the time had come for him to act, and on July 10, 1656, he appointed Josias Fendall Governor of the Province in place of Stone, to the end that there might be good government established, "for the

[1] Carlyle, IV, 133.
[2] Bozman, II, 532. Bennett had gone to England.

cherishing and supporting of the good people and well affected, as for the punishment of the vicious and disorderly persons."[1] The Proprietary probably felt that Stone's administration had aroused many animosities and that a new Governor would more easily reestablish harmony in Maryland. Stone was retained, however, as first Councilor and there were also appointed to the Council Thomas Gerard, Colonel John Price, Job Chandler, Luke Barber, and others, not exceeding three in number, to be named by Fendall, who was likewise authorized to name a Secretary and receiver general. Fendall had commanded the party sent by Stone to seize arms and ammunition at the Patuxent, and had been in the battle of March 26 as one of the Proprietary's soldiers. These and doubtless other forgotten proofs of zeal in the cause induced Baltimore to confide to him the government of the Province.

The Proprietary, under date of October 23, sent instructions to Fendall,[2] from which we learn interesting facts concerning the controversy in England. After Baltimore's complaint to the Protector, in 1655, that he "was interrupted in his rights and jurisdictions in Maryland," Cromwell, on November 2, appointed Bulstrode Whitlock and Sir Thomas Widdrington to examine into the matter. They reported on May 26, 1656, but their report is unfortunately lost. It must have been favorable to Baltimore, however, for on petition of Bennett and Samuel Matthews, as "agents for Virginia and the rest of the Plantations in the Bay of Chesapeake," the report and its accompanying papers were referred to the Committee for Trade[3] on July 31. This last body asked Bennett and Matthews "to make some proposals for the settlement and peace" of Maryland.

[1] 3 Md. Arch., Coun., 323; Bozman, II, 534. McMahon (An Historical View of the Government of Maryland from its Colonization to the Present Day, 210) says of Fendall that "his treachery is conspicuous in almost every transaction with which he is connected." He was untrue to his compact with the Commissioners and to his commission from Baltimore.

[2] Bozman, II, 537; 3 Md. Arch., Coun., 324.

[3] Thurloe, A Collection of the State Papers of John Thurloe, 482; Bozman, II, 470, 540, 690.

These proposals were received and also some answers from Baltimore, with which answers Bennett and Matthews declared themselves satisfied. On September 16 the committee made its report to Cromwell, which seems to have favored Baltimore. There was still delay from some unknown cause, and on December 17 the Council of State referred the whole matter to the Committee for Foreign Plantations.[1] A month later nothing had been done. Bozman[2] is probably correct in his sage surmise that the claim of Virginia for the whole of Maryland had been rejected by the Protector in 1655, and that only the disputes "that had happened between the men of Severn and Lord Baltimore's officers" were under further consideration.

Baltimore's instructions to Fendall of October, 1656, were written while he was still uncertain of the final outcome in England,[3] but was encouraged to believe that his claims would be successful. He directed his lieutenant that, when the people who opposed his government should have quietly and peacefully submitted themselves, the act concerning religion of 1649 should be again enforced. A new great seal would soon be sent. Two thousand acres of land were to be set out to Fendall, as had been promised him by a letter of August 23, and one thousand acres each to five others of the Proprietary's followers.[4] Mrs. Hatton, Mrs. Lewis, and Mrs. Eltonhead, the widows of the men shot by the Puritans, were to be supplied out of the Proprietor's rents in case they were in need, and they were to be assured that Baltimore "will continue his utmost endeavors, by soliciting" Cromwell and his Council, to procure them justice for their husbands' deaths and satisfaction for their losses.

[1] 3 Md. Arch., Coun., 330, see 332. In August, 1657, proposals for transporting Irish to Maryland from England were respited by the Council of State. Virginia Magazine of History and Biography, XVIII, 152.

[2] II, 538.

[3] 3 Md. Arch., Coun., 325.

[4] Luke Barber, Thomas Trueman, George Thomson, John Langford, and Henry Coursey. Barber and Trueman had been promised also in August. Quit rents of a shilling for fifty acres were reserved on the lands.

Baltimore also directed Fendall to tell them to let Baltimore "know wherein he can do them any good" in Maryland, "in recompense of their sufferings, of which he is very sensible."

Further paragraphs[1] in the instructions directed that persons who have been faithful and "done good service in the late troubles" should be "cherished and comforted" and preferred to places of trust and profit,[2] and that Baltimore be informed "wherein he can upon any occasion requite them." The Council must take care to prevent encroachments from being made upon the Province, especially on the side of Virginia, which colony had recently claimed the whole of Maryland.[3] It is quite probable, as Bozman surmises, that Baltimore prepared these instructions to his Council in "exact conformity to the report of the commissioners for trade."[4]

A month later the Proprietary issued new instructions to his Governor and Council and sent them over by his brother, Philip Calvert, whom he commissioned as a Councilor and as Secretary of the Province. Calvert was directed to administer the oath of office to Fendall and to have laid out for him six thousand acres of land, to be erected into one or more manors.[5] Additional grants of one hundred and of two hundred acres were made to two men,[6] and fifty acres were promised to every servant "that hath and shall serve out his time with any planter" and "approve himself faithful" to Baltimore. Greater caution in these new grants was shown, in that the stretch of the grant along the water was limited to fifty poles in every fifty acres.[7] These November instructions also directed all sheriffs and coroners to give bond before they entered their offices.

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[1] Gibbons's windmill at St. Mary's had been assigned by his widow to Baltimore, and the Proprietary directed the Council to care for it.

[2] Thomas Trueman, George Thomson, Lieutenant Thomas Tunnell, and William Barton are especially mentioned.

[3] Lost maps of the two Provinces are referred to.

[4] Bozman, II, 543.

[5] 3 Md. Arch., Coun., 329 (November 12); Bozman, II, 545. Philip Calvert was to perform the functions of land commissioner and of register of wills.

[6] William Thomson and Paul Simpson.

[7] All this land paid the usual quit rent.

Philip Calvert had arrived in the Province before June 8, 1657, when he and Fendall held a Council at St. Mary's and the latter nominated Luke Barber to be his deputy[1] while he was out of the Province on a voyage to England. This absence lasted until February 26, 1657/8, but Barber's tenure of office was probably only nominal, as the actual rule of the Province was in the hands of the Commissioners.[2]

The second and last of the Assemblies held under the authority of Fuller and the other Commissioners met at Patuxent, probably at Mr. Preston's house, on September 24, 1657.[3] We have no knowledge how it was summoned, or what part was taken by the various members. Eleven of the Commissioners assembled as the Provincial[4] Court on the twenty-second under Preston's presidency, and that court sat daily, except Sunday, until October 1 and again on October 5. We do not know how long the legislative session lasted. The Assembly probably sat in two houses, and the Lower House consisted of ten members, of whom one, the Speaker, Captain Richard Ewens, was also a Commissioner.[5] Of the other nine, Captain Robert Vaughan came from Kent, Peter Sharp from Patuxent, Captain Robert Sly from St. Mary's.[6] Captain Joseph Weeks, Mr. Robert Taylor, Captain Thomas Besson, Captain Philip Morgan, Mr. Michael Brooke, and Mr. James Johnson are unidentified as to residence.

Bacon numbers thirteen chapters as the laws of this Assembly.[7] The first of these is a confirmation of the act of recognition of 1654, and the second is a repeal of four of the acts of that year, one of which, concerning sheriffs' and

[1] Bozman, II, 547; 3 Md. Arch., Coun., 331.
[2] 3 Md. Arch., Coun., 331.
[3] 1 Md. Arch., Ass., 359; Bozman, II, 549. On Samuel Preston, son of the first settler, see Penn and Logan Correspondence, II, 341.
[4] 10 Md. Arch., Prov. Ct., September (22) 519, (23) 521, (24) 524, (25) 527, (26) 534, (28) 542, (29) 542, (30) 544, October (1) 545, (5) 547.
[5] Andrew Skinner was clerk. Sly and Brooke had sat as Commissioners.
[6] See p. 107.
[7] 1 Md. Arch., Ass., 359–365, 1654, ch. 8, levies on visible estate; ch. 13, theft; ch. 16, births, marriages, and deaths; ch. 34, fees.

Clerks' fees, is reenacted. "The public charges of this Province" for the year are to be levied by a poll tax, in which tax men-servants are included.[1] The tax was fixed at thirty-two pounds of tobacco per poll, which was slightly higher than the one of twenty-six pounds per poll laid in Virginia in 1654. A penalty was decreed for packing ground leaves or second crops of tobacco in any hogshead. Popleys or Poplar Island was annexed to Kent County. The inhabitants were allowed to use any lawful means for killing wolves, even employing an Indian for that purpose. The commission of the St. Mary's County court had not been attended to, and the Assembly levied on that county sums for the killing of thirteen wolves, for the sheriff's and Clerk's charges, for Mrs. Fenwick's "trouble and charge in entertaining and setting people over the river," etc. The charges, occasioned by "the disquiet and disturbance of the public peace of the Province" through Captain Josias Fendall's acts, whatever they may have been, were levied on the Province, as were those for the execution of servants at Providence who had killed Robert Parr,[2] their master. Other charges refer to the battle of the Severn: thus, Mr. Spry was paid for "diet and curing of wounded men;" Mr. Hodgkeys for "shoes and stockings delivered the soldiers in the service of Maryland;" the widow Besley for her relief, her husband being slain in the public service, leaving behind him four small children; John Wallcot "for attending and dressing 32 prisoners;" and Robert Franklin, John Underhill and George Whittle, who were wounded. Attachments and executions were so regulated as to be less oppressive to debtors. Captains Ewen, Besson, and Weeks were appointed as a committee to call to account any person who received or disposed of the fines "amerced upon any of the disturbers of the public peace in the last engagement." This seems to show that the order made in 1655 for the sequestra-

[1] Bozman (II, 550) thinks that negroes were not included but only indentured servants. Two servants, Stockden and Guneon, were freed from the poll tax.

[2] 10 Md. Arch., Prov. Ct., 554.

tion of the estates of members of the Proprietary party had not been honestly executed,[1] and this committee was directed to sit after the end of the Assembly's session, and also to receive from the sheriffs a just account of the fines, ransoms, or compositions received by them. The report of the committee must be made to Mr. Michael Brooke or Mr. Peter Sharp before the Provincial Court at Patuxent in March next, but we do not find it extant.

XII. Restoration of Proprietary Government, 1657.

Not until November 30, 1657, had articles of agreement been signed in England between Baltimore and Matthews, who represented "Bennett and other people in Maryland, now or late in opposition to his Lordship's government."[2] Ten days before this, Baltimore had sent new instructions to his Governor and Council.[3] The first of these authorized Fendall to accept the resignation of any Councilor who desired to tender it, and empowered any three of the Council, including Calvert, to discharge any Councilor who should refuse to act or to attend courts without excuse. A new great seal was sent out in Fendall's care, and he was given authority to affix it to patents, in accordance with the Conditions of Plantation, to which patents "Fendall and Calvert, or, if the latter die, 2 others of the Council," must sign their names. Persons receiving patents must take the oath of fidelity, as altered in accordance with the report of the Committee of Trade made September 16, 1656, and those who had opposed the Proprietary government must subscribe a submission thereto, in presence of the Governor or Secretary. A confirmation of a grant of ten thousand acres to Edward Eltonhead[4] was made. Fendall, Calvert, and any other two Councilors were empowered to make any foreigner capable of taking advantage of the Conditions of Plantation. Robert Clarke was reappointed

[1] Bozman, II, 550.
[2] 3 Md. Arch., Coun., 332.
[3] 3 Md. Arch., Coun., 335.
[4] Bozman (II, 556) queries whether he was Wm. Eltonhead's son.

as Councilor, and Fendall and Calvert were granted permission to add other Councilors, not exceeding six in number. In case of Philip Calvert's death, that early pioneer, Thomas Cornwallis,[1] was to take his place in confirming Fendall's acts. These instructions were doubtless drafted in anticipation of the agreement, which recited that the controversies in Maryland had led to "much bloodshed and great distempers there, endangering the utter ruin of that plantation." The matter had been referred to the English authorities, but Cromwell and the Privy Council had not as yet, "by reason of their great affairs," had leisure to determine the question, so that the inhabitants of Maryland "remain in a very sad, distracted and unsettled condition." In this juncture of affairs Edward Digges, who had been sent by Virginia as an additional agent a short time before, used his "friendly endeavors" about "the composure of the said differences,"[2] and so Baltimore agreed to treat, stipulating that the Puritan party should not execute any governmental act, should deliver up to the Governor or Secretary all the records of the Province, and the great seal, if they found it, and should submit to the Proprietary government for the future. If the Puritans agreed to this, on his part Baltimore would agree that the differences which had arisen in Maryland should not be decided in the Provincial Courts, but in such manner as Cromwell and his Council should direct; that the Puritans might have land patents just as if no controversy had occurred, provided they sued out the patents within nine months, took the oath of fidelity, and paid the usual fees; that such of the Puritans as wished to remove from Maryland might have a year to do so; and that the Proprietary would never consent to the repeal of the act of 1649 concerning religion. In other words, the Puritans yielded, and Samuel Matthews, that old enemy of the Pro-

[1] Bozman (II, 557) suggests that there is a slight distrust of Fendall here.

[2] Bozman, II, 552. The instructions of the Virginians to Digges direct him to assure Cromwell that they had not interested themselves in the quarrel in Maryland.

prietary, who had aided in the deposition of Governor Harvey because of his friendliness to Baltimore, had to sign this submission twenty years later.

Bearing these papers with him,[1] Fendall returned to America, and on February 26 he resumed the titular Governorship. On the next day he held a Council at St. Mary's, at which Calvert and Stone were present and at which the articles between Baltimore and Matthews were published. Letters were then sent to Fuller, Preston, and the other Puritan leaders, asking them to meet Fendall, Calvert, and Cornwallis at "St. Leonard's Creek in Patuxent River," on March 18, to perform the articles. Bennett had received word of the agreement from Matthews and wrote of it at once to Fuller. Baltimore had, by lost instructions dated November 18, authorized Fendall and Calvert to treat with the Commissioners, and to ratify and confirm such articles as should be agreed upon with reference to the restoration of the Proprietary government.[2]

On March 18, 1657/8, the three Proprietary representatives came to St. Leonard's,[3] but wind and weather kept Captain Fuller back until Saturday the twentieth, when he came with Preston, Lloyd, Mears, Philip Thomas, and Samuel Withers to surrender the government. The day was far spent when they arrived, and, as Sunday was "not fit to treat of business," negotiations were begun on Monday, March 22. Fendall read the agreement and demanded that the records, great seal, and government of the Province be delivered to him, promising to carry out Baltimore's part of the agreement. He then read Baltimore's instructions of the preceding November.

Fuller and his Commissioners[4] propounded divers other articles tending, as they conceived, to the "quiet and welfare of the Province." These were debated during Monday

[1] 3 Md. Arch., Coun., 332.
[2] 3 Md. Arch., Coun., 334; 1 Md. Arch., Ass., 369.
[3] 3 Md. Arch., Coun., 335. On the early Proprietary land grants down to this period see Maryland Historical Magazine, III, 160.
[4] 3 Md. Arch., Coun., 339; 1 Md. Arch., Ass., 369.

and Tuesday. On Wednesday the amended articles, which had been engrossed, were read, and being approved by both sides, were signed by Fendall, Calvert, and the Commissioners, with many other persons.

"Then was the Governor's commission publicly read and proclaimed and writs issued immediately for an Assembly to be held at St. Leonard's 27° Aprilis following." Thus, at the beginning of the year 1658, O. S., was Baltimore's rule reinstated throughout the Province, as it had been established at the same time of year twenty-three years before. The articles here drawn up were enacted into law at the April session of the General Assembly and form the first chapter in that session's laws.

The first article declared that all persons on both sides should be indemnified and "freed from any charge or questioning for any act" done from December, 1649, to the date of the treaty. Fendall and his associates objected to this statement, as the words seemed to "admit of a necessity of pardon and, consequently, an implication of guilt in his Lordship's officers," but finally yielded, as they considered that "some of his Lordship's officers needed an indemnity for breach of trust passed."

The second article affirmed the legality of sheriffs', clerks', and secretarys' fees since 1652 and of the levies made by the General Assemblies of 1654 and 1657. The Proprietary's representatives adroitly said of this article that these Assemblies represented the "major part of the people," though not summoned "by lawful warrant," and that the "Proprietary is not bound to any one way of calling Assemblies, or assenting to what by them is done," so they agreed to the article.

The other articles stated that no person should be disarmed and "left to the cruelty of the Indians" unless he be "proved to bear arms to an hostile intent," that the conduct of any person since 1652 should not deprive him of the suffrage, or of the right to sit in the Assemblies; that no order of Assembly or court in cases of private law since 1654 "shall

be declared void by pretence of irregularity of the power of government;" that land warrants should be granted to all entitled to them by the Conditions of Plantation who should apply for them within six months; and that a submission to Baltimore be substituted for the oath of fidelity in the case of persons then resident within the Province. The Proprietary's representatives agreed to the last article, with the clear understanding that the oath of fidelity must be taken by all not then residing in Maryland.

The struggle was over and Baltimore had won. Not unfairly does Browne sum up his policy in his history of Maryland:[1] "Every engine had been brought to bear against him—fraud, misrepresentations, religious animosities and force, and each for a time had succeeded. He owed his triumph to neither violence, fraud, nor intrigue; but to the justice of his cause and his wisdom, constancy, and patience."

[1] See p. 88.

APPENDIX.

A Summary of the Proceedings of the Provincial Courts, 1649 to 1658, Chronologically Arranged.

Provincial Courts of 1649 and 1650.

The Provincial Court met in June, 1649, probably in October, in November, and in December, on January 25, 1649/50, at St. Mary's with only Stone and Hatton present; on February 20 at the Governor's house in St. Michael's Hundred, when Price came as a third member; and at St. Mary's on February 26, when Greene took the place of Price.[1] The proceedings were of small interest for the most part; cases came up involving the title to cattle,[2] and deeds of heifers were formally recorded,[3] as were many earmarks of individuals.[4] Powers of attorney were registered, especially to George Manners, who seems to have been one of the first legal practitioners in the Province;[5] a commission was issued to administer an oath;[6] we find mortgages of crops, cattle, and vessels,[7] and releases[8] and indentures for servants.[9] Many suits were brought for debts of tobacco, of blue linen and of other goods, for the unlawful detention

[1] 4 Md. Arch., Prov. Ct., 485, 495, 538, 544, 546 (Nov. 15, Greene presided, and Price, Pile, Vaughan, and Hatton were also present), 527.

[2] 4 Md. Arch., Prov. Ct., 485, 497. Case for illegal detention of a bull, 4 Md. Arch., Prov. Ct., 540, 10 Md. Arch., Prov. Ct., 3, 4.

[3] 10 Md. Arch., Prov. Ct., 9, 13, 32, 48; 4 Md. Arch., Prov. Ct., 500, 508, 516, 527.

[4] 4 Md. Arch., Prov. Ct., 487, 495, 498, 500, 506, 508, 514, 515, 518, 536, 543, 547; 10 Md. Arch., Prov. Ct., 9.

[5] 4 Md. Arch., Prov. Ct., 485, 513, 518, 533, 536; 10 Md. Arch., Prov. Ct., 7, 8, 9.

[6] 4 Md. Arch., Prov. Ct., 507, 510, 515.

[7] Bonds were filed, 10 Md. Arch., Prov. Ct., 8; 4 Md. Arch., Prov. Ct., 512, 516.

[8] 4 Md. Arch., Prov. Ct., 518.

[9] 4 Md. Arch., Prov. Ct., 519.

of a crop, of a boat,[1] of a servant,[2] for slander,[3] concerning a warranty of a servant.[4] The custom of the country concerning servants who had served out their period of indenture was discussed,[5] writs were issued concerning persons intending to leave the Province and those who carried away fugitive debtors.[6] Probate matters also were attended to by the court.[7] A suit brought for assault and battery was submitted to arbitrators and their decision is recorded.[8] Among the more interesting items was a mortgage made by Sheriff Philip Land of St. Mary's County of the "whole benefit profit, and allowance" which shall come to him from his office "for this present year, together with a cow of his," as security for a debt.[9] In November, Greene lodged a complaint against "Skipper Abraham Janson" because he had, while "riding at an anchor in St. George's River" in the preceding March, "aboard his ship, publicly," abused Greene, who was then the Governor, "with most disgraceful and reproachful language," thereby not only endeavoring to impair Greene's reputation, but also to "affront his Lordship's dignity here."[10] Vaughan, with John Hatch, as Janson's attorney in the Province, thereupon requested Greene[11] to withdraw his charges, and Hatch promised to pay the costs incurred. Upon this Greene pardoned Janson and withdrew his action, "in a confident expectation" of Janson's better behavior

[1] 4 Md. Arch., Prov. Ct., 497.
[2] 4 Md. Arch., Prov. Ct., 496, 500.
[3] 4 Md. Arch., Prov. Ct., 498.
[4] 4 Md. Arch., Prov. Ct., 533, 537, 538.
[5] 4 Md. Arch., Prov. Ct., 539, see 10 Md. Arch., Prov. Ct., 48, 238.
[6] 4 Md. Arch., Prov. Ct., 533, 537, 540.
[7] 4 Md. Arch., Prov. Ct., Francis Cox's estate, 502; Wm. Wheatley's estate, 507; J. Thomson's estate, 499, 503; Thomas Hebden's will, 511, 519, 520, 548, 10 Md. Arch., Prov. Ct., 46, 418; Wm. Thompson's estate, 4 Md. Arch., Prov. Ct., 525, 534; P. Makarell's estate, 529; Thomas Arnold's will, 543.
[8] 4 Md. Arch., Prov. Ct., 485, 501, 505, 523, 538.
[9] 4 Md. Arch., Prov. Ct., 493, 502, 542; 10 Md. Arch., Prov. Ct., 5.
[10] 4 Md. Arch., Prov. Ct., 515, 517.
[11] They call him "now present Governor."

when he should come to Maryland again. A little afterwards, when Mrs. Brent sued Manners for a debt, he attempted to plead as set-off a fee for a service he as sheriff rendered to her as the Proprietary's attorney, but the set-off was not allowed, as the sheriff must execute all business belonging to his office which concerns Baltimore without fee.[1] Court procedure was becoming fixed and formal; defaults[2] and nonsuits appeared, and Bretton was blamed for tearing the draft of a deposition taken in a case.

In February, 1649/50, Sterman, who had been concerned in the plundering time on Ingle's side, complained of Richard Husbands, mariner, because he refused to give Sterman a bond he had promised.[3] John Dandy testified that he heard the promise and was also present at the refusal, at which time Husbands said: "You are lawless ashore and I will use what law I please here aboard. You long to raise a second Ingle here." Elias Beach sued Henry Adams for trespass in taking away his boat from his landing-place without license.[4] Adams admitted taking the boat, but said that there was no damage done, as he "did but directly cross the Creek therewith and immediately returned it again." Furthermore, he thought Beach had given him leave, for when he asked Beach for a passage, the answer was, "I would willingly give you passage, but think my boat is leaky and will not swim." Beach's attorney admitted that his client had not proceeded in this cause but for the counsel of "some ill neighbors," and that he could not prove any damage; but he asked that the case be respited till the next court, that the cause might be tried by another judge. After long debate Greene, "the present Governor," declared in favor of dismissing the case, as there was no proof of damages, and said that the plaintiff should have no more time, as the parties he wished as witnesses lived within a mile of him and two miles of the court, but had not been

[1] 4 Md. Arch., Prov. Ct., 529.
[2] 4 Md. Arch., Prov. Ct., 532, 539.
[3] 4 Md. Arch., Prov. Ct., 546.
[4] 4 Md. Arch., Prov. Ct., 487, 530, 547.

summoned. The postponement until Stone's return would "not only be a wilful delay of justice, but also secretly to admit a corruption in the present judge, much to the indignity of his Lordship's both Court and person." The other four Councilors present, however, voted to postpone the cause, that the plaintiff might prove his damage; they held that there must have been some damage, "were it but the wearing of the boat," and that it would be a dangerous precedent to decide such actions in behalf of the trespasser. They furthermore saw no danger of delay of justice, and Greene had to yield. When the case came up in February, Stone voted with Greene to dismiss it, as no damage was proved; but Hatton, the only other Councilor present, dissented.

An execution was granted in March to John Dandy for work done as a smith, in accordance with the law passed for the benefit of that artificer.[1] Only one case of fraud in the tobacco trade is reported. In February, 1649/50, oath was taken that little more than one hogshead of good tobacco had been found in two hogsheads which John Jarboe, a planter, packed.[2]

Provincial Courts, April and June, 1650.

During the spring and summer two courts were held:[3] the one in April and the other on June 25, the latter of which was held for only one day and then broken up until October, "upon the earnest motion of the inhabitants to be discharged of their attendance on the Court at present, it being very like to be plantable weather."[4] General powers of attorney were filed to Manners, who represented Mrs. Margaret Brent and others, one of these powers being merely for suits in which the principal was plaintiff.[5] Record was

[1] 10 Md. Arch., Prov. Ct., 7.
[2] 10 Md. Arch., Prov. Ct., 9.
[3] 10 Md. Arch., Prov. Ct., 15, 23, 27. Nicholas Gwyther was appointed sheriff on March 25, 10 Md. Arch., Prov. Ct., 10.
[4] On the court records we find earmarks recorded, 10 Md. Arch., Prov. Ct., 10, 13, 14, 18, 20, 23, 30, 42. An affidavit is recorded concerning the alteration of one of them, 10 Md. Arch., Prov. Ct., 29.
[5] 10 Md. Arch., Prov. Ct., 17, 19, 23, 24, 26.

made of nuncupative wills of Robert Wiseman and Henry Hooper, surgeon, and of other probate matters,[1] from which we learn that the allowance of a year and a day to an administrator was already a Provincial custom.[2] We also find a jointure of a dwelling-house, plantation, and four cows made by James Johnson to his wife Barbara, a kinswoman of Mr. Secretary Hatton.[3]

Mortgages of crops,[4] assignments,[5] among them two of debts from tavern keepers for entertainment of Assemblymen,[6] and deeds of cows[7] are found, of course. Few crimes are noted; an appeal from the Kent County court judgment was allowed because the defendant was guilty of perjury;[8] John Dandy, the smith, sued Richard Husbands, mariner,[9] because on his ship in February he bound Dandy's arms behind him and tied them to his neck with a cord, in rigorous fashion; Thomas Maidwell sued Dandy and wife for assaulting him in a violent manner and striking him to the ground with a hammer,[10] because he had "accepted of 2 or 3 peaches"[11] from a girl who lived in Dandy's household; and a man was charged with stealing a parcel of peas, a cake of soap, a parcel of shot, and a bottle of vinegar, which he hid in a loft and in the corn.[12] A question of account was referred to arbitrators, that the differences might be determined or the arbitrators' proceedings certified for the court's further order.[13]

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[1] 10 Md. Arch., Prov. Ct., 10, 11, 35 (21, administration of John Palmer's estate. He was of Kent), 30, Jas. Warrington's estate. Robt. Wiseman's estate, St. Mary's, April 16, 1650, Cotton, The Maryland Calendar of Wills.

[2] 10 Md. Arch., Prov. Ct., 23. Estate of Wm. Tompson.

[3] 10 Md. Arch., Prov. Ct., 12.

[4] 10 Md. Arch., Prov. Ct., 14, 19, 22.

[5] 10 Md. Arch., Prov. Ct., 18.

[6] 10 Md. Arch., Prov. Ct., 14.

[7] Among them one by Greene to his sons Francis and Thomas, 10 Md. Arch., Prov. Ct., 14, 20, 27, 29, 30.

[8] 10 Md. Arch., Prov. Ct., 17.

[9] 10 Md. Arch., Prov. Ct., 25.

[10] 10 Md. Arch., Prov. Ct., 31.

[11] This is the earliest reference to Maryland's peach industry. The suit was speedily compromised.

[12] 10 Md. Arch., Prov. Ct., 17.

[13] 10 Md. Arch., Prov. Ct., 25, 46, 47.

A foreman of a jury was sued[1] because the loser by the decision claimed that the verdict was imperfect. While the cause was being heard, the plaintiff, William Hardwick, said that when the cause formerly came to hearing, Greene, who was Governor at the time, put him in prison to take him off from the prosecution. For these opprobrious words, as Greene was then sitting on the bench, the court fined Hardwick and committed him to imprisonment during the Governor's pleasure. Hardwick then expressed himself as very sorry and asked Greene's forgiveness in open court, and all penalties were remitted.

Two men claimed a gun which seems to have been taken from the plaintiff by Leonard Calvert, when he last went to Kent, upon promise to return it when he came back.[2] This promise was forgotten, and Calvert later gave the defendant the gun. The court awarded the plaintiff the gun, but divided the costs, as the defendant "had good reason to stand out to a trial." Mrs. Brent was directed to give over some cows which Calvert had given in payment for a house and plantation, and was secured in "quiet possession" of the land in return.[3] Mrs. Brent, as her brother's representative, was also sued for the hire of a shallop used in Calvert's last Kentish expedition.

Runaway servants[4] from Virginia were ordered to be returned to their masters, in care of the Virginia officer sent to secure them, and a curious case appeared in which a man complained against another for "detaining from him a boy heretofore taken by the Indians in the last massacre in Virginia and by them, since those wars, returned back to be presented to Sir William Berkeley, Governor there, who was pleased to give the boy" to the plaintiff. The defendant alleged that the boy was his own son, but failed to prove it,

[1] 10 Md. Arch., Prov. Ct., 26. Probably because the verdict was alleged not to be unanimous. The case was not settled.

[2] 10 Md. Arch., Prov. Ct., 24, 40. Other echoes of the difficulties of Calvert's times may be found on pp. 10–12.

[3] 10 Md. Arch., Prov. Ct., 15, 27. Calvert gave these cows by writing dated February 10, 1646/7.

[4] 10 Md. Arch., Prov. Ct., 15, 20, 24, 27, 35, 42.

and immediately after the trial the plaintiff filed an assignment of his right in the boy to the defendant.

PROVINCIAL COURT, SEPTEMBER, 1650, TO MARCH, 1651.

The Provincial Court met monthly from September, 1650, to March, 1651.[1] At the February court seven Councilors were present, the largest number yet recorded, but usually only three or four sat on the bench. Probate matters have some interesting features;[2] one administrator files an inventory and receives his quietus, a caveat is issued against a will, a widow is allowed maintenance from an estate for a year, administration of an estate is assigned. Some unfinished business concerning Leonard Calvert's estate is transacted. Thomas Hebden's widow fails in an attempt to oust the trustees of certain property appointed by her husband during his life, and on their complaint is forbidden to make any wilful waste of the estate.[3] The usual paucity of criminal matters is found, a case of assault and battery being the only one referred to.[4] A jury of inquest upon the body of a servant, who seems to have died in a fit, holds that his master is not responsible, but orders him to pay the costs of the jury, as he buried the servant privately and suddenly, and thus aroused suspicions.[5] In September, Brent is accused of acting prejudicially to the Proprietary's rights and Manners is ordered to investigate the charges, but nothing came of them.[6]

Cattle are sold,[7] one of them paying for certain books

[1] 10 Md. Arch., Prov. Ct., 33, 45, 51, 52, 54, 75, 157.

[2] 10 Md. Arch., Prov. Ct., 67. P. Mackerall's estate, 35, 42, 43. Wm. Porter's estate (Kent), 10 Md. Arch., Prov. Ct., 50, 62, 75, Cotton, Maryland Calendar of Wills. Nicholas Harvey's, 10 Md. Arch., Prov. Ct., 63. Nathaniel Stiles's estate, Cotton, Maryland Calendar of Wills. Other estates referred to are Robert Short (Kent), 10 Md. Arch., Prov. Ct., 62, Hy Crawley (whose will was dated 1639), 60, Edward Cummins (Kent), 43, 62. A guardian of Robert Short's daughter is appointed, 51.

[3] 10 Md. Arch., Prov. Ct., 37, 46, see 4 Md. Arch., Prov. Ct., 418, 512, 548.

[4] 10 Md. Arch., Prov. Ct., 51.

[5] 10 Md. Arch., Prov. Ct., 52, 73.

[6] 10 Md. Arch., Prov. Ct., 33.

[7] 10 Md. Arch., Prov. Ct., 34, 45, 52, 53, 55.

brought to the Jesuits,[1] earmarks are recorded,[2] and traffic seems to be covering other fields than cows and tobacco. Many debts are adjudicated, accounts adjusted,[3] judgments acknowledged,[4] acknowledgments and receipts entered on the records,[5] sureties accepted.[6] A bond is recorded,[7] set-offs are claimed.[8] A commission is issued to take testimony,[9] a case formerly decided is not allowed to be re-opened,[10] many powers of attorney are filed and revoked,[11] cases are respited for such reasons as that witnesses are in Virginia[12] or the defendant is unable to travel.[13] A chattel mortgage,[14] a crop mortgage,[15] a deed of sale of a shallop,[16] a partnership bond for the hiring out of half a shallop,[17] are found. A man claims two hogsheads of tobacco, and states that one of those which the defendant gave him has been claimed by a third person.[18] The court orders half of the debt discharged, as the plaintiff had received one hogshead, and still another person agrees to pay the other for the defendant. A servant sues for his outfit according to the custom of the country.[19]

Cases of assumpsit appear[20] for work as a bricklayer[21] or a carpenter.[22] A man secures judgment against Robert

[1] 10 Md. Arch., Prov. Ct., 33.
[2] 10 Md. Arch., Prov. Ct., 45, 50, 64.
[3] 10 Md. Arch., Prov. Ct., 35–38, 40, 41, 66, 69, 71.
[4] 10 Md. Arch., Prov. Ct., 37, 38, 43, 50, 54.
[5] 10 Md. Arch., Prov. Ct., 53, 54, 63.
[6] 10 Md. Arch., Prov. Ct., 53.
[7] 10 Md. Arch., Prov. Ct., 64.
[8] 10 Md. Arch., Prov. Ct., 71.
[9] 10 Md. Arch., Prov. Ct., 64.
[10] 10 Md. Arch., Prov. Ct., 41.
[11] 10 Md. Arch., Prov. Ct., 39, 41, 43, 51, 59, 60, 63, 64.
[12] 10 Md. Arch., Prov. Ct., 36, 38, 39, 40, 47.
[13] 10 Md. Arch., Prov. Ct., 72.
[14] 10 Md. Arch., Prov. Ct., 59.
[15] 10 Md. Arch., Prov. Ct., 32.
[16] 10 Md. Arch., Prov. Ct., 51.
[17] 10 Md. Arch., Prov. Ct., 64.
[18] 10 Md. Arch., Prov. Ct., 39, 53, 66. See 65 for a curious case where two men disagreed about the proper delivery of tobacco to be paid for a rug.
[19] 10 Md. Arch., Prov. Ct., 48, 52. See 4 Md. Arch., Prov. Ct., 539.
[20] 10 Md. Arch., Prov. Ct., 35.
[21] 10 Md. Arch., Prov. Ct., 39, 46.
[22] 10 Md. Arch., Prov. Ct., 58. See 72, 73, for a suit for failure to perform contract to build a house.

Brooke, the Councilor, for tobacco due on specialty and for two bushels of onions.[1] The defendant had offered to make over a man-servant bound for four years and pay any remainder in tobacco, but the offer had been refused. Brooke seems to have been considerably indebted at this time, and several judgments were recovered against him.[2]

Brooke was absent from the January and February courts, and at the latter, one of his creditors, who wished soon to return to Europe and to carry with him tobacco which Brooke owed him, induced the Council to summon Brooke and to promise relief if Brooke did not come. Brooke sent his son, Charles, as his attorney. The case proved to be a claim for the payment of the hire of two men-servants for thirteen weeks' labor.[3] Brooke denied that he owed aught, for the men were hired jointly for the time, and as one was absent from illness for five weeks of the thirteen, the covenant was not fulfilled by the plaintiff. A jury was impannelled and gave the plaintiff a judgment for the time the men had worked. A suit is found between two tenants on Gerard's manor concerning a lease of certain land there,[4] and Governor Stone sues Mrs. Brent for a sufficient conveyance of his house at St. Mary's.

A case of slander was filed in October[5] by Captain John Price, a Councilor, against Luke Gardiner for saying that he "kept an unlawful dog to kill his neighbors' stocks, because he would have the whole range himself." Gardiner declared that he added, "for aught I know," to the sentence, and that the words were not published, but spoken privately to Captain Price. The court, however, looked upon the words as a "disrespective expression to one of his Lordship's

[1] 10 Md. Arch., Prov. Ct., 58.

[2] 10 Md. Arch., Prov. Ct., 59. As no sheriff had been appointed for Brooke's county—Charles—until March 2, 1653, on that day Nicholas Gwyther, the sheriff of St. Mary's, was directed to collect the debt and do all sheriff's business for Charles County till further order, 10 Md. Arch., Prov. Ct., 124.

[3] 10 Md. Arch., Prov. Ct., 54–58. The servants belonged to Mitchell and had been working for Stone. Brooke sent them out to hunt, and they were lost in the woods.

[4] 10 Md. Arch., Prov. Ct., 36.

[5] 10 Md. Arch., Prov. Ct., 35, 38.

Council," though it "remitted the offence" on Gardiner's "acknowledgment of his fault." In another case Mrs. Francis Pope complained that Richard Browne had said that he learned from his wife that Mrs. Pope said that "the King died justly." This was a high matter, and the defendant was clearly "found in two several tales," and was fined for these and "for intermeddling in a business of this nature." Having won her cause, Mrs. Pope was merciful and remitted the fine, as Browne was a poor man, so he merely paid costs.

In March, 1650/1, George Manners was fined[1] for executing an attachment some time previously, alleging that Philip Land, the sheriff, had appointed him as his deputy, when in reality Land had appointed Nicholas Gwyther. At the same time Gwyther is reappointed sheriff until 1652, after which time the office is promised again to Land.

In November, William Eltonhead sued George Manners for slander,[2] but the latter brought witnesses to testify that Eltonhead had said that Governor Stone and Mr. Mottram had been better for the plundering (i. e., Ingle's attack), and that if they had been in England they would both have been hanged for selling powder and shot to the plunderers. Eltonhead alleged that there was a conspiracy against him, but Manners's death put an end to the case.

Provincial Court, May, 1651, to March, 1651/2.

In the year following the session of the General Assembly we have record of the meeting of the court in the months of May, June, November, and December, 1651, and January, February, and March, 1651/2. Stone and Hatton were always present and sometimes sat alone, while at other times they were assisted by from two to five Councilors.[3]

A considerable amount of testamentary business is transacted. Thomas Greene died before January 20, 1651/2. On November 18, 1650, he assigned all his property to two

[1] 10 Md. Arch., Prov. Ct., 75.
[2] 10 Md. Arch., Prov. Ct., 156.
[3] May, 10 Md. Arch., Prov. Ct., 76; June, 76; Nov., 108; Dec., 113; Jan., 94, 123; Feb., 99; Mch., 140.

trustees for the benefit of his wife and children. At his death the Jesuits[1] should receive one thousand pounds of tobacco. If at the end of seventeen years his wife and children were dead, the trustees should take one fourth and the Jesuits the other three fourths of the estate, to be employed to charitable uses "most tending to the honor and glory of Almighty God, either here in this Province or elsewhere, my own decent livelihood during my life being herein always comprehended." George Manners, merchant and attorney at law, also died about this time, and his estate gave rise to much judicial business.[2] Mrs. Manners was administratrix and received wearing apparel, bed, bedding, and three barrels of corn "according to the custom of the Province," without inventory. Captain Edward Hill recovered from the estate three guns, which Copley had delivered to Manners to keep for Hill's use. Mrs. Manners married Edward Hall, her bondsman, an illiterate man. The notorious Captain Mitchell, who was a creditor of the estate, endeavored in November, 1652, to have Hall "discharged from any further meddling" with the administration, but

[1] "My most honored friend Thomas Copley, Esq., or his successors." 10 Md. Arch., Prov. Ct., 88, 123, 148, 160. Walter Cooper's estate, 10 Md. Arch., Prov. Ct., 83. Thos. Maidwell's estate, 10 Md. Arch., Prov. Ct., 122, 135, 144, 148, 162 (one of the claims against it was for payment for his transportation from England to Maryland); 163, his account with a curious medical bill is given.

[2] 10 Md. Arch., Prov. Ct., 93, 109, 113, 114, 119, 122, 127–130, 137, 144, 209, 216, 440, 453, 454, 460, 464, 467, 505. Cotton, Maryland Calendar of Wills. Nuncupative will of Mrs. Mary Risbrook of Kent, 10 Md. Arch., Prov. Ct., 91. Thos. Maidwell's estate, Cotton, Maryland Calendar of Wills. Thos. Weston's estate, 10 Md. Arch., Prov. Ct., 113. Mrs. Ann Cooper's estate, Cotton, Maryland Calendar of Wills. Wm. Brough's estate, Cotton, Maryland Calendar of Wills. Mrs. Katherine Hunt's estate, 10 Md. Arch., Prov. Ct., 113, Cotton, Maryland Calendar of Wills. Stephen Salmon, 10 Md. Arch., Prov. Ct., 113 (debt acknowledged to estate, execution to wait twelve months). John Garie's estate, 10 Md. Arch., Prov. Ct., 139. James Johnson's estate, Cotton, Maryland Calendar of Wills. Joseph Caille's estate, 10 Md. Arch., Prov. Ct., 139, 140, 144, 147, 169 (suit for salt), Cotton, Maryland Calendar of Wills. For quietus on Wm. Smithfield's estate see 10 Md. Arch., Prov. Ct., 17, 91, 4 Md. Arch., Prov. Ct., 466. Thomas Tynney of Providence is the first one of that part of the Province to have his estate administered. Leonard Strong was appointed administrator, 10 Md. Arch., Prov. Ct., 138, 156.

this seems not to have been done. In March, 1655/6, another creditor, who alleged that there was none to defend the estate, was appointed administrator de bonis non, but in May, 1657, Mrs. Thomas Orley, who had formerly been Mrs. Manners, but is now married for a third time, comes into court and has a discharge, as Hall had fully administered upon the estate ere he died, and had even paid out more than the estate amounted to.

There are three inquests, one in the case of Philip Anther, who was accidentally shot by James Longworth, for which the latter was fined five hundred pounds of tobacco;[1] a second over Thomas Lisle, who was killed by falling from a tree, in which he had climbed to cut a limb;[2] and a third over John Clifford, a servant, who was found drowned and was supposed to have committed suicide.[3]

Cattle continue a prominent feature in the people's life, and deeds of sale of cows,[4] or hogs,[5] of gift of cows,[6] and records of earmarks[7] appear, while controversies arise over the ownership of hogs,[8] over the killing of a hog[9] and of an offensive bull,[10] and over the sale of a cow represented falsely to be with calf.[11] Cattle are mortgaged[12] and sued for,[13] an estray is taken up;[14] but we see signs that land is becoming valuable, as well as the stock upon it. In addition to the familiar crop mortgages[15] we find a caveat filed for land,[16] and a controversy between Gerard and Lewis over rent of a plantation, which dispute they first brought before

[1] 10 Md. Arch., Prov. Ct., 139, 141.
[2] 10 Md. Arch., Prov. Ct., 154.
[3] 10 Md. Arch., Prov. Ct., 157.
[4] 10 Md. Arch., Prov. Ct., 84, 85.
[5] 10 Md. Arch., Prov. Ct., 86.
[6] 10 Md. Arch., Prov. Ct., 87, 108, 122.
[7] 10 Md. Arch., Prov. Ct., 83, 86, 87, 88, 93, 113, 122, 155, 156.
[8] 10 Md. Arch., Prov. Ct., 132.
[9] 10 Md. Arch., Prov. Ct., 100.
[10] 10 Md. Arch., Prov. Ct., 117.
[11] 10 Md. Arch., Prov. Ct., 119, 131.
[12] 10 Md. Arch., Prov. Ct., 153.
[13] 10 Md. Arch., Prov. Ct., 96, 146.
[14] 10 Md. Arch., Prov. Ct., 84.
[15] 10 Md. Arch., Prov. Ct., 82, 88, 91.
[16] 10 Md. Arch., Prov. Ct., 83.

Copley, from whose award Lewis appealed to a former judgment of the court.[1] He also stated that he had been "forced out of the Province by the late troubles," and asked that he be not obliged to pay rent for the time during which he could not use his plantation. The court allows the force of the defendant's pleas and gives a small judgment for Gerard. The manorial rents of three "tenements" have not been paid for three years, and the tenants are summoned to pay the arrears or suffer escheat of their lands.[2] A little later the Attorney General, Hatton, asks that the court see to the enforcement of the act of 1650 concerning deserted plantations and that the exception of orphans' lands from the act be not used to the Proprietary's injury.[3] The desired motion is made. Fixed fees are provided for the sheriff or his deputy, who go to levy for rents in arrears. A warrant is given the Surveyor to lay out one hundred acres for a man who transported himself to the Province in 1644,[4] two assignments of land are recorded,[5] and we find one deed of sale of all a man's property, "except my wearing clothes, and my wife's, my bed and all that belongs to it and 3 trunks with the goods contained in them, my whole crop of tobacco and my debts, one chamber pot and a pint pot and such of my books as I shall think fit."[6]

Debts[7] occupy much of the court's attention, assignments are made,[8] receipts recorded,[9] acknowledgments filed,[10] judgments confessed,[11] bonds filed,[12] and security is given.[13]

[1] 10 Md. Arch., Prov. Ct., 81.
[2] 10 Md. Arch., Prov. Ct., 93, 95.
[3] 10 Md. Arch., Prov. Ct., 125.
[4] 10 Md. Arch., Prov. Ct., 95, cf. 102.
[5] 10 Md. Arch., Prov. Ct., 101, 137.
[6] 10 Md. Arch., Prov. Ct., 119. Among things sold is a "yearling bull supposed to be in the woods."
[7] 10 Md. Arch., Prov. Ct., 79, 94–103, 108, 113, 123, 126, 166, 154, 129, 136, 146.
[8] 10 Md. Arch., Prov. Ct., 123.
[9] 10 Md. Arch., Prov. Ct., 93.
[10] 10 Md. Arch., Prov. Ct., 93, 94, 113.
[11] 10 Md. Arch., Prov. Ct., 76, 140.
[12] 10 Md. Arch., Prov. Ct., 83, 84, 112.
[13] 10 Md. Arch., Prov. Ct., 101, 102, 108, 128, 137, 144.

Thomas Chynne, a mariner and a mate on a ship which was ready to sail, sues for a debt of tobacco, which the debtor alleges he could not pay "till there be a season for striking tobacco," but in spite of this plea, judgment is given.[1]

While the court acts with fair promptness,[2] cases are sometimes respited or postponed to a later court.[3] Many powers of attorney are filed,[4] an appeal is taken from a decision of the Anne Arundel County court,[5] a search warrant is issued,[6] and a man is given license to go to Virginia.[7] A gambling debt is not allowed to be recovered,[8] or one for hire for a voyage to Virginia or for other service to the use of "the Rebellion" of 1645. A man is whipped[9] for saying to one of the Governor's messengers: "You have an honest face. It is a pity you will be hanged," and "I wish the Virginians that came up in service of the Governor had estates in Virginia. Rather than I would have come up upon such employment as they did, I would have gathered oysters for my living." One case of a slander is tried,[10] the ownership of a small boat is determined,[11] and an unsuccessful suit is brought for hire of a boat.[12] Outside of Mitchell's case, there was little crime. A man was fined for striking another near the court door,[13] another had bound over to keep the peace a man whom he alleged to have threatened his life and to be living in adultery with his wife.[14]

One case of fraud comes up, in which it is alleged that

[1] 10 Md. Arch., Prov. Ct., 140. For an execution and set-off, see 10 Md. Arch., Prov. Ct., 135.
[2] In one case it refused to delay for a jury trial, but gave immediate judgment, 10 Md. Arch., Prov. Ct., 147.
[3] 10 Md. Arch., Prov. Ct., 80, 131, 203.
[4] 10 Md. Arch., Prov. Ct., 78, 121, 122, 137–139, 152.
[5] 10 Md. Arch., Prov. Ct., 103.
[6] 10 Md. Arch., Prov. Ct., 95.
[7] 10 Md. Arch., Prov. Ct., 98.
[8] 10 Md. Arch., Prov. Ct., 96, 97.
[9] 10 Md. Arch., Prov. Ct., 94.
[10] 10 Md. Arch., Prov. Ct., 115. Defendant said that plaintiff got one of his negroes with child.
[11] 10 Md. Arch., Prov. Ct., 103, 104, 115.
[12] 10 Md. Arch., Prov. Ct., 140.
[13] 10 Md. Arch., Prov. Ct., 136.
[14] 10 Md. Arch., Prov. Ct., 109.

a debt was paid in "deceitful rotten tobacco."[1] Copley is convicted, after a jury trial, of giving entertainment to and unlawfully detaining a runaway servant of a Virginia planter.[2] Questions with reference to contracts of service[3] and whether a man is a servant or not[4] are decided. Stone had possessed himself of Mrs. Margaret Brent's house at St. Mary's and she had offered to secure him against all just claims.[5] On July 22, 1650, she had written to recall to his mind her request that he find from the records what right she had to the house. She wished to advise with her brother before she gave Stone a deed, and stated that, if her title were not good, she would return the house into the inventory of Leonard Calvert, to whom it had belonged, and "would not entangle myself in Maryland, because of the Lord Baltimore's disaffections to me and the instructions he sends against us."[6] When she comes down, she promises to bring a copy of the statute to justify her right to Leonard Calvert's land, and hopes to have the matter tried in the Maryland court. Some trouble develops, and Giles Brent, as his sister's attorney, on January 5, 1651/2, gives Stone notice to leave the house.[7] Instead of doing so, however, he buys it from her on January 23, 1651/2.[8]

Provincial Court, Spring and Summer of 1652.

After the reduction of the Province by the Parliamentary Commissioners, a court for the County of St. Mary's was held on April 22, Mr. Robert Brooke and Lieutenant Richard Banks sitting as justices.[9] The court seems, however, to have performed all the functions of the Provincial one. It heard cases of alleged debt for tobacco or pork,[10] giving a

[1] 10 Md. Arch., Prov. Ct., 152.
[2] 10 Md. Arch., Prov. Ct., 132.
[3] 10 Md. Arch., Prov. Ct., 115, 117, 121, 127, 137.
[4] 10 Md. Arch., Prov. Ct., 144.
[5] 10 Md. Arch., Prov. Ct., 104.
[6] Stone is directed to sell the goods he has of hers.
[7] 10 Md. Arch., Prov. Ct., 122.
[8] 10 Md. Arch., Prov. Ct., 172.
[9] 10 Md. Arch., Prov. Ct., 159.
[10] 10 Md. Arch., Prov. Ct., 159, 160.

jury trial in one case against Captain Mitchell, it relieved a man from a bond,[1] granted letters of administration and attended to other testamentary business,[2] recorded a release of an indentured servant,[3] and respited a suit[4] for a debt for money given a shipmaster to be laid out in Holland for commodities. Captain Mitchell's conduct came up for discussion, but his trial, of which we have already written, occurred at a second session of the county court held in June.[5] An assignment of debts and of a sloop to save a fellow bondsman from loss,[6] receipts,[7] debts of tobacco and cows,[8] trespass in driving away a bull,[9] a mortgage, and a gift of cows[10] are mingled with the serious business of the trial of the charges against Mitchell. A man is convicted of defaming another falsely by charging him with altering the earmarks of a parcel of pigs.[11] Francis Brooke alleged that John Dandy "unlawfully detained a parcel" of cows, which had originally been given him as security for a debt, now paid. Dandy said that he had paid the debt, and so claimed the cattle. The case dragged on for nearly a year, and then the court found that Brooke had paid nearly all the amount due, and decreed that he should have the cattle returned him when he paid the residue.[12]

On July 14, 1652, a court was held upon a special warrant,[13] and was attended by Stone, Hatton, Yardley, and

[1] 10 Md. Arch., Prov. Ct., 161.
[2] Estate of Wm. Brough, 10 Md. Arch., Prov. Ct., 162, 165, of Robert Ward, 10 Md. Arch., Prov. Ct., 161.
[3] 10 Md. Arch., Prov. Ct., 165.
[4] In June the jury gave plaintiff a verdict, 10 Md. Arch., Prov. Ct., 162, 166.
[5] On the last day of June, Stone, Hatton, Chandler, and Yardley held court instead of Brooke and Banks, but it is the "same court continued."
[6] 10 Md. Arch., Prov. Ct., 172.
[7] 10 Md. Arch., Prov. Ct., 170.
[8] 10 Md. Arch., Prov. Ct., 166–169.
[9] 10 Md. Arch., Prov. Ct., 167.
[10] 10 Md. Arch., Prov. Ct., 168.
[11] 10 Md. Arch., Prov. Ct., 167.
[12] 10 Md. Arch., Prov. Ct., 169, 195, 196, 209, 215, 224, 229, 256. The defendant had some cause to question the payment, so the costs were divided.
[13] 10 Md. Arch., Prov. Ct., 186. The cattle and land of the late

Chandler, to decide whether two indentured servants were entitled to freedom. They had belonged to Thomas Copley and his successors, that is, the Jesuits, and as Copley had recently died, Father Lawrence Starkey had the men arrested, as servants neglecting their employment. They set up a discharge, by agreement with Copley that they were to make a crop and pay certain quantities of tobacco to him, but, "by reason of much rain, the plants had been drowned." The court held that a bargain "betwixt the Master and his apprentice servants was of no validity at law," that the agreement was void, and that the men must serve out their "times of service."

PROVINCIAL COURTS, NOVEMBER, 1652, TO MARCH, 1653.

During the autumn of 1652 and the winter following, courts were held in November, January, and March.[1] The court records are quite full for this period and show an increasing variety of legal business. Earmarks were still entered,[2] deeds of sale or of gift of cattle were recorded,[3] and a cow was mortgaged with a plantation.[4] A suit was brought for delivery of the same useful animals[5] according to alleged agreement, and another case concerned the shooting of a bull.[6] Wild cattle caused great inconvenience, and Cornwallis, Eltonhead, Fenwick, and others asked the Provincial Court that these might be "killed or otherwise secured from annoyance," but Baltimore's attorney "claimed some right" in these cattle, and the matter was judged to

William Brough were sold, and the deed, with a power of attorney from the sellers, Wm. Scott, mariner, and wife (formerly Brough's wife), to the purchaser are recorded about this time, 10 Md. Arch., Prov. Ct., 187; see 169, 193, 195, 204, as to debts of the estate. Finally, the purchaser, Walter Beane, was ordered to take out letters of administration. Cotton, Maryland Calendar of Wills.

[1] November (20) 10 Md. Arch., Prov. Ct., 191; (23) 199; (24) 198, 203; (25) 207; January (20) 217; (21) 220; March (11) 232; (22), 237.

[2] 10 Md. Arch., Prov. Ct., 187, 189, 190, 197, 236, 249.

[3] 10 Md. Arch., Prov. Ct., 190, 213, 249.

[4] 10 Md. Arch., Prov. Ct., 198.

[5] 10 Md. Arch., Prov. Ct., 205.

[6] 10 Md. Arch., Prov. Ct., 246.

be of "such general concernment" as fitly to be referred to the General Assembly.[1] A year later, there having been no Assembly in the meantime, Governor Stone issued a proclamation reciting that Marks Pheypo, Nicholas Keating, Martin Kirke, and others had, "in a bold, contemptuous, unwarrantable manner gotten up, killed or disposed of to their own use" some of these wild cattle, and therefore, "in the name of the Keepers of the Liberties of England by authority of Parliament and as governor here under the Right Honorable Lord Baltimore, Lord Proprietary of this Province," Stone directed the above named men and all others to forbear from such conduct in future and to turn loose any such cattle now in their pens.[2] Gerard sued Fenwick for a colt and recovered one thousand pounds of tobacco when it was shown that the colt was dead.[3] Disputed titles to hogs,[4] and allegations that Robert Brooke had unlawfully slain another man's hogs, that other men had slain his,[5] and that men, by unlawfully hunting hogs on Kent Island, frightened and scattered Dr. Ward's pigs,[6] show how important were these animals.

Deeds of land are found, for example one of a parcel of two hundred acres, bearing the name of St. Jerome's Thicket, while several cases concerning title to land occur.[7] In one of these we find that the owner had "peach trees and other fruit trees" planted upon the cleared ground, an early instance of the raising of fruit, for which Maryland has always been famous.[8] In another case the defendant was accused of altering his bound marks, and Clarke, the Surveyor General, testified that this had been done by his direction, on account of a mistake in the survey.[9] The court

[1] 3 Md. Arch., Coun., 295.
[2] 10 Md. Arch., Prov. Ct., 324, lease referred to General Assembly.
[3] 10 Md. Arch., Prov. Ct., 238, 276, 354.
[4] 10 Md. Arch., Prov. Ct., 205, 225, 246.
[5] 10 Md. Arch., Prov. Ct., 220, 239, 240, 242, 243, 273, 353, 354.
[6] Without the precincts of the Lord Proprietor's forest, 10 Md. Arch., Prov. Ct., 233.
[7] 10 Md. Arch., Prov. Ct., 189, see 230.
[8] 10 Md. Arch., Prov. Ct., 198.
[9] 10 Md. Arch., Prov. Ct., 205, 218, 245. A verbal grant of land

directed the plaintiff peaceably to enjoy his land. If he prove, upon a new survey, to have more land than the former survey stated, he should have the additional land granted him on payment of the rent to the Proprietary. The Surveyor must pay the cost of this new survey, and each party must bear his own costs in the suit. In a third case Mrs. Edward Cummins, while a widow, had sold land to Joseph Weeks and afterwards married Dr. Thomas Ward. Weeks refused to perform his part of the bargain without a grant[1] of the land from the Proprietary, and the question arose as to whether the widow could sell the land "from her children, as it was part of her husband's estate granted by him to her and her heirs." As the estate was a freehold, the court held that the sale was lawful, and with Ward's consent directed that the proceeds of the sale should be "disposed of for the maintenance and best benefit" of Cummins's children. At the next court Ward complained of Weeks's "unconscionable and extreme dealing" in taking a servant in execution, leaving Ward with none, though Ward tendered other good satisfaction in cattle. The servant, he further alleged, belonged to the Cummins children. The case was referred to the Kent court to regulate the matter "in point of equity," as the county court "shall think fit."

Fugitives from debt[2] were a cause of trouble. Two men bought a sloop, giving a mortgage on their crops for payment, and went out of the Province on the vessel. Other

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conflicted with a survey and was upheld, but the owner had to pay 300 pounds of tobacco and costs and survey charges and the rights of an equal amount of land to the complainant, 10 Md. Arch., Prov. Ct., 220.

[1] 10 Md. Arch., Prov. Ct., 228, 235. Robert Brooke also petitioned that a survey he alleged to be fraudulent be declared void, 10 Md. Arch., Prov. Ct., 245, 248. A warrant was granted Capt. Wm. Hawley for six thousand acres of land, to which Jerome Hawley had rights, but which had not been taken up by him, 10 Md. Arch., Prov. Ct., 250.

[2] One of the claims against the fugitives was assigned to the receiver of customs to pay dues to the Proprietary, 10 Md. Arch., Prov. Ct., 187, 188, 200, 201, 247. See case of Thomas Hamper, who left the Province, 10 Md. Arch., Prov. Ct., 201.

creditors appeared and their whole estate was attached. Cornwallis sued John Pile for transporting his cattle from Accomac[1] in 1643, and Pile showed a discharge from Fenwick, Cornwallis's agent, dated in 1647. This was given, as Fenwick testified, because Argall Yardley promised satisfaction in goods for the debt when his Dutch ship should come in, but the satisfaction was never given. The court held that the suit should be dismissed with costs and one hundred pounds of tobacco damages to Pile for his charges and trouble, but he remitted this sum in open court. The notorious Captain Mitchell sued one Major Levin Buskin for nails[2] and other materials furnished for the latter's house, and as Fenwick, Buskin's agent, admitted the debt,[3] Mitchell was given possession of the house and plantation until the debt should be paid. Governor Stone sued one William Empson for truck given him "to put amongst the Indians," and the Provincial Court referred the case to the arbitration of three men not members of the Council, who brought in a verdict for Stone, whereupon the court ordered

[1] 10 Md. Arch., Prov. Ct., 191, see 4 Md. Arch., Prov. Ct., 323. Cornwallis (10 Md. Arch., Prov. Ct., 190, 198, 207) sued Mrs. Hebden for a debt of her late husband's, secured by mortgage of cattle in 1643, and recovered a part of the amount hitherto unpaid.

[2] 10 Md. Arch., Prov. Ct., 193, 196, 210. Col. Yardley sued successfully Capt. Richard Husbands of the ship *Hopeful Adventure* for supplies of food furnished him, 10 Md. Arch., Prov. Ct., 197, 202, 390. Another skipper, Jacob Derickson, was sued for not bringing in goods, 10 Md. Arch., Prov. Ct., 247.

[3] There are several confessions of judgment recorded, 10 Md. Arch., Prov. Ct., 199, 206, 208, 209, 221, and also a suit to recover the balance of a bill where defendant had sent an insufficient amount of tobacco, 10 Md. Arch., Prov. Ct., 199. A man is sued as having undertaken to pay another's debt for him, 10 Md. Arch., Prov. Ct., 193, 201, 221. Other cases of debt are found: 10 Md. Arch., Prov. Ct. (1) 202, 249, 271, (2) 207, (3) 208, (4) 209, 217, a servant of Montjoy Evelin, in the possession of Gerard, was attached by the sheriff to pay Evelin's debt, and Gerard promised to secure him until the next court, (5) 221, 275, 338, a specialty sued on, (6) 222, 228, judgment assigned, (7) 222, Richard Bennett, Governor of Virginia, sues and recovers debt but no interest, (8) 238, defendant denies borrowing hogshead of tobacco, but says that he agreed to transport such hogshead for plaintiff to Virginia, but the tobacco proved rotten and unmerchantable, (9) 241, 277, 345, 366, covenant, (10) 249, receipt.

Empson to pay the amount[1] which the arbitrators found to be due.

One case, which was a claim for payment for some goods, was postponed[2] from November to January court upon the "defendant's wife's motion." Comparatively little testamentary business appeared.[3] Servants took up considerable time. Mary Jones complained of harsh usage from William Eltonhead and his wife and was ordered to return home with them. They were ordered, however, not to meddle with her "for matter of correction, but to sell or exchange her with all convenient speed."[4] A brickmaker sued Gerard for the house and equipment promised him at the expiration of his term of service, and in answer Gerard said that the plaintiff had run away and purloined some of his goods. The court, with the consent of the parties, annulled all contracts and suits between the parties and compelled the plaintiff to pay the costs.[5] In another suit[6] the plaintiff complained that the defendant did not deliver him as able a servant as he should have done in exchange for one of the plaintiff's. A jury brought in a verdict for the plaintiff, but the court ordered him to pay the "court charges," as he had kept the servant "so long without seeking for recompense and as the defendant had been at some charge in curing the servant . . . of a sore foot."

A servant of one of the Jesuits complained that his master "would keep him a perpetual servant," and he was

[1] 10 Md. Arch., Prov. Ct., 220.

[2] Mitchell finally acted as defendant's attorney, 10 Md. Arch., Prov. Ct., 203, 227.

[3] J. Cornish, Cotton, Maryland Calendar of Wills. Joseph Cadle's estate, land appraised and debt ordered paid, 10 Md. Arch., Prov. Ct., 190, 203, 208. Francis White's estate (Kent), 194, 230. John Gaither's estate (Anne Arundel), 194. Wm. Brough's estate, 169, 204. Robt. Ward's estate, 213. Wm. Stephenson's estate, 250, Cotton, Maryland Calendar of Wills. Anthony Rawlings, Cotton, Maryland Calendar of Wills.

[4] 10 Md. Arch., Prov. Ct., 191.

[5] 10 Md. Arch., Prov. Ct., 213, 237, 248, 271.

[6] 10 Md. Arch., Prov. Ct., 216, 223, 224. In another suit the plaintiff demands damages (10 Md. Arch., Prov. Ct., 237) because he had to pay a Virginian for bringing the defendant to Maryland, the defendant claiming to be a freeman.

directed to serve for three years, at the end of which time he should receive a cow, a sow, corn, and clothes, according to the custom of the country.[1] A man sued Fenwick for a servant promised him, and Fenwick pleaded that none had "come in"[2] from England. He did not satisfy the debt, and finally an execution against his body was issued, under which the Governor appointed the house of Henry Fox for a prison and ordered Fenwick not to depart out of the limits of this prison, which limits were half a mile from the house, till he paid the debt.

A curious deposition was filed concerning a hunting voyage.[3] One Ralph Harellton swore that in November, 1651, Paul Simpson, who was intending such an expedition, but could not speak the Indian language, came to Lieutenant William Lewis, Harellton's master, at Port Tobacco, his residence, and asked Lewis to join with him and share equally the meat they killed. Lewis agreed, and leaving his own boat, put guns and ammunition, two barrels of salt, and a "tun of cask" on Simpson's vessel. Simpson, Lewis, and Harellton went up the river on her toward Piscataway, and learning that there were some of the Apomattocks men hunting there, they took on board their goods, namely, three and one half tuns of cask, salt, guns, and meat. Lewis then asked Simpson to meet him at Guigawatick and to take on board the vessel at Piscataway the venison from ten deer which belonged to him. This was done, and Lewis provided a house and Indians for Simpson at Guigawatick and there settled him and Harellton. Simpson then told Lewis that he might return home and that, on Simpson's return from hunting, he would put in at Port Tobacco and divide with Lewis the meat which was killed, besides giving Copley a share out of Simpson's portion. Lewis next went down to St. Mary's to fetch up cattle, and Simpson asked him to

[1] 10 Md. Arch., Prov. Ct., 247. Another servant succeeded in a suit against Father Starkey for the equipment due him at the expiration of his term of service, 10 Md. Arch., Prov. Ct., 254, 277.
[2] 10 Md. Arch., Prov. Ct., 247, 365.
[3] 10 Md. Arch., Prov. Ct., 192.

bring some powder from Copley. Harellton had been left with Simpson, being charged to do whatever Simpson commanded him, and he was soon bidden also to go to St. Mary's and fetch powder from Copley. Simpson ordered Harellton that he must not speak to nor go to Lewis, and that he must not tell Copley that they had killed any fowl, though there was a hogshead of them when Harellton went down the river. At that time Simpson also had almost four hogsheads of venison, and one of Lewis's barrels of salt was untouched. Just at this time Simpson was in a good deal of trouble. He asked that Walter Pakes be bound over to keep the peace, and accused him of having stabbed him in the side and cut him in the arm.[1] This attack was made because Pakes charged Simpson with having committed adultery with his wife. But they soon made up, the bond was released, and on September 20, 1653, they signed articles of a general partnership with each other of the most extensive kind.

Comparatively few cases of tort are found. Three persons were accused of having said, about 1649, that they had "found a way to pay Eltonhead without weight or scales. Hang them, Papists dogs, they shall have no right here. It it not fit they should, for the Governor cannot abide them, but from the teeth outwards." To this truculent language[2] a bystander replied, "Fie, fie, you may be ashamed to judge so harshly upon Christians." Two men appealed from judgments of the Kent County court[3] in cases of slander. In one case the defendant was ordered to acknowledge in open court of the county that he had done the slandered woman great wrong and to ask her forgiveness, and to pay one thousand pounds of tobacco as fine, or, if his estate

[1] 10 Md. Arch., Prov. Ct., 188, 190, 203, 296, 320. On January 3, 1653/4, Pakes executed an instrument releasing Paul Simpson, Gent., "late of the Province of Maryland," from all claims which Pakes might have against Simpson and annulling any letters of attorney he had given him. See 321. Three powers of attorney are recorded in the latter part of 1652 and beginning of 1653, 10 Md. Arch., Prov. Ct., 221, 229, 246.

[2] 10 Md. Arch., Prov. Ct., 229, see 300.

[3] 10 Md. Arch., Prov. Ct., 234.

would not satisfy this, to be whipped with one and thirty stripes. The other appeal was referred to the General Assembly. The sheriff of Kent County was accused of malfeasance in office in not turning over to the Secretary fees due that officer, and was ordered to pay them at once.[1] Captain Vaughan, the commander of the county, had put the sheriff in office, and if the sheriff proved insolvent, Secretary Hatton was permitted to proceed against Vaughan.

In January the question[2] arose as to whether the rents payable to the Proprietary began "from the time of the survey or the delivery of the grant, and whether any rent ought to be paid for the year, wherein the land was surveyed, in case the survey was not made for 12 months or near thereabouts before the day of payment." The Council, after hearing evidence, unanimously decided that "rents were accountable from the date of the certificate of survey," and that, when the survey was made within twelve months before the rent day, the rent should be apportioned.

The court was careful of its dignity and fined men for being drunk or swearing in its august presence,[3] but mercifully postponed suits when one of the defendants was a woman lying in childbed[4] and when another one was a man disabled by some hurt. A number of bonds are recorded,[5] among them one for bail, another agreeing to submit a case to arbitration, and a third by which George Evelin created an annuity of £20 sterling in return for the cash sum of £120.

Stone and Hatton sued[6] one William Battan for selling liquor without a license, "contrary to the law of England," and for entertaining Stone's overseer to drink in his house, whereby he did neglect his business in sowing tobacco seed, by which omission the Governor was damnified. Battan was fined on the former charge, and then asked Hatton to mediate with the Governor on his behalf as to the latter one.

[1] 10 Md. Arch., Prov. Ct., 232.
[2] 10 Md. Arch., Prov. Ct., 223, see 203.
[3] 10 Md. Arch., Prov. Ct., 201, 221.
[4] 10 Md. Arch., Prov. Ct., 202, 229, 243.
[5] 10 Md. Arch., Prov. Ct., 211, 231, 237.
[6] 10 Md. Arch., Prov. Ct., 219, 243.

The court now clearly acts as an equity tribunal,[1] for example deciding a case concerning a lost bill. In one of the equity cases, that of Cornwallis v. Sterman, for carrying away goods in the plundering year, the defendants pleaded the statute of limitations, and as this was "doubtfully understood," the case was respited until the next General Assembly.[2] In March, 1653/4, however, the case was referred to the arbitration of Stone and Hatton, and was decided by directing the Stermans to pay three hogsheads and one hundred pounds of tobacco and court charges, whereupon Cornwallis should deliver them two bills given to Ingle concerning powder and a gun. An assignment from Ingle to Cornwallis of all his debts in Maryland had been made in England on September 8, 1647, "after a long and chargeable suit," and it was recorded in Maryland in January, 1652/3, with an inventory of sixteen debts, bearing various dates between 1640 and 1645.[3] Cornwallis at once brought suit on two of these claims against Gerard and Sterman. The case against Gerard was respited until April, if there should be no earlier General Assembly to consider it, that against Sterman[4] was postponed until the next court, "and the records to be searched in the meantime, to see whether any act of attainder were passed here against" Ingle. Gerard brought suit in turn against Fenwick,[5] as Ingle's former attorney, claiming that he had paid him. Ingle admitted payment, but demanded that he might see the bill on which Cornwallis had sued Gerard, that he might know whether it was the one upon which Cornwallis now sued. This was allowed, and Cornwallis was directed to bring the bill into court.

[1] 10 Md. Arch., Prov. Ct., 242, 246, 254. On the early development of equity see Newbold, Notes on the Introduction of Equity Jurisdiction into Maryland, 1634–1720.

[2] 10 Md. Arch., Prov. Ct., 219, 254 (in another case, in which Cornwallis was defendant, he pleaded limitations and won partly for this cause, 4 Md. Arch., Prov. Ct., 539; 10 Md. Arch., Prov. Ct., 238), 321, 348 (three hundred and fifty pounds in each hogshead).

[3] 10 Md. Arch., Prov. Ct., 211, 218, 238; 3 Md. Arch., Coun., 292.

[4] Cornwallis, 10 Md. Arch., Prov. Ct., 218, also sued Sterman for mismarking a cow.

[5] 10 Md. Arch., Prov. Ct., 241, 273, 275, 341.

In June the case of Cornwallis v. Gerard was referred to the General Assembly, but it came again before the Provincial Court and was decided on March 4, 1653/4. It was then determined that Gerard had gone to Virginia, after he knew of Ingle's conveyance to Cornwallis, and "unlawfully and, by the arbitrary power and favor of the then Governor there [probably Berkeley], obtained a judgment and thereby possessed himself of Ingle's estate in that Province." Here is a complicated affair which "tends to the questioning of the power of the late Governor of Virginia and to the reversing of a judgment already passed in that Colony concerning an estate then in that Colony, by opposing a conveyance made in England against that judgment." To prevent "clashing of contradictory orders" or engendering "any breach or just distaste betwixt the two governments, but rather, by all fair and friendly means, to preserve a mutual correspondency," the court refused to proceed further, but referred Cornwallis to seek relief in Virginia, and if he did so and the Virginia court ordered Gerard to appear before it, his refusal to appear "will be understood as a contempt of the government here." If Cornwallis failed to prosecute the case in Virginia or lost it there, the Maryland court would see that he paid the costs.

At this time Baltimore made a claim[1] to part of Virginia, thinking that Acquia Creek was the South Branch of the Potomac, and at James City on March 14, 1653/4, Giles Brent presented a petition asking relief, inasmuch as Baltimore had instructed his Secretary to issue to another a grant of Brent's land in Westmoreland County. The Virginia Council ordered that the commissioners of that county guard the bounds and interests of Virginia, and we hear no more of the matter.

[1] William and Mary College Quarterly, XIII, 279, XVI, 34. On the Brents see also Virginia Magazine of History and Biography, XV, 450, article by W. B. Chilton.

Provincial Court, April to September, 1653.

In the sessions of court which were held in April, June, and September, 1653, varied business was transacted.[1] A case was postponed because the defendant suffered a "disastrous accident" by a boar,[2] earmarks were registered,[3] discharges of debts and acknowledgments were recorded.[4] One of the latter was to the smith, John Dandy, for fixing arms.[5] There was an inquest upon a suicide, whose estate is forfeited to the Proprietary,[6] and debts were proved against the estates of men who had died.[7] A bastardy case occupied much of the court's time in June,[8] and a special court, composed of Stone and Hatton, was held on August 8 to try a man committed by the Kent County court for felony, in that he broke open his master's chest and took goods out, intending to run away with them to Virginia.[9] He changed his mind and told his master that the Indians had opened the chest, and did not remove the goods from the house, so the court limited his punishment to twenty-five lashes and payment of court charges. The disreputable Captain Mitchell sued a former servant of his,[10] who had run away and, having been taken in execution by virtue of a judgment against Captain Mitchell, was appraised as having "two crops" to serve, whereas he really ought to have served for three years. Mitchell's contention was upheld, and the defendant was ordered to enter his service till he should give security to pay eight hundred pounds of

[1] April 10, 10 Md. Arch., Prov. Ct., 258. June 7, 8 and 9, 10 Md. Arch., Prov. Ct., 268. September 26, 10 Md. Arch., Prov. Ct., 293. On June 9 the Governor appointed John Metcalf sheriff of St. Mary's County, 10 Md. Arch., Prov. Ct., 278.

[2] 10 Md. Arch., Prov. Ct., 258.

[3] 10 Md. Arch., Prov. Ct., 260, 293.

[4] 10 Md. Arch., Prov. Ct., 265, 266, 278, 279.

[5] 10 Md. Arch., Prov. Ct., 265, 266, 292.

[6] Wm. Bounday of Patuxent, 10 Md. Arch., Prov. Ct., 271, Cotton, Maryland Calendar of Wills.

[7] John Nunn, 10 Md. Arch., Prov. Ct., 260, 261, 279, 280, 325; Edward Cotton, 277, 345. Nunn, Cotton, and Jas. Knott, in Cotton, Maryland Calendar of Wills.

[8] 10 Md. Arch., Prov. Ct., 272, 276, 280, 339, 340, 366.

[9] 10 Md. Arch., Prov. Ct., 291.

[10] 10 Md. Arch., Prov. Ct., 259, see 160, 185.

tobacco and cask before the end of November. Fortunately for the servant, a third person paid the sum, accepting him as his debtor.

Cattle, of course, were the subject of a number of entries. Earmarks,[1] a gift of a cow,[2] a number of deeds of sale of cows,[3] and an order of court to return a cow which had been lent, are all found.[4] George Rapiar, musician, the first practitioner of the arts known to us in the Province, entered into partnership with John Carrington, planter, giving him a moiety of his five cattle for one thousand two hundred pounds of tobacco and a moiety of his two hundred acres of land, on further condition that Carrington should live with Rapiar for two years "to help to settle and clear" the land.[5] All necessaries bought by either party were to go into the copartnership, and both should be "at equal proportion of charge for all things bought or procured into their family" for housekeeping.

Two entries dealt with land. Cornwallis agreed to transfer to Cornelius Canada, brickmaker, three hundred acres of land on the Patuxent in return for thirty-six thousand "good, sound, well burned bricks." A third of these were to be made that year on the Potomac, or Patuxent, as Cornwallis should appoint, and he must furnish two servants to assist Canada. The remainder of the bricks must be delivered before the end of June, 1654, at the water front of Canada's plantation, "where they may conveniently be fetched away by boat," unless Cornwallis wished them by Christmas, when they should be made on his plantation with the help of his servants. Canada should also pay

[1] 10 Md. Arch., Prov. Ct., 260, 293.
[2] 10 Md. Arch., Prov. Ct., 265.
[3] 10 Md. Arch., Prov. Ct., 260, 261, 291, 293, 352.
[4] 10 Md. Arch., Prov. Ct., 277.
[5] 10 Md. Arch., Prov. Ct., 290. Gerard sold Mitchell four heifers with calf or calves at their side, of Gerard's own stock and to be selected out of twelve, at Mitchell's return from England. Mitchell is to choose two and Gerard two. If Mitchell die, the person authorized to demand the cows for his children shall choose one of the cattle, 10 Md. Arch., Prov. Ct., 266. Mitchell filed a power of attorney to two men at this time, 10 Md. Arch., Prov. Ct., 267.

yearly, as a quitrent, five bushels of Indian corn, or twenty shillings sterling. This deed is another proof of the fact that bricks were early made in the Province and in large quantities. The other land record is a suit successfully brought by a planter against Robert Clarke, the Surveyor General,[1] for refusing to survey for him one hundred acres on Draper's Neck, which he claimed by warrant, and for surveying it for Francis Brooke,[2] "upon a more general and subsequent warrant." Brooke was allowed, in lieu of this land, two hundred acres "not yet taken up."

Hatton, the Provincial Secretary,[3] had been "at great charges" for the entertainment of the widow and children of his brother, Richard. The widow afterwards married Lieutenant Richard Banks. In consideration of Hatton's releasing them from all debts touching the above named charges, they assigned to him all right and title to land due to Mrs. Banks for the transportation of herself and her children into Maryland.[4] One of these children, Elinor, whom her father a little before his death had recommended to the care and tuition of Thomas Hatton, was, in 1654, detained by Luke Gardiner at his house in an "uncivil, refractory, insolent manner." Her mother and uncle feared that Gardiner was endeavoring "to train her up in the Roman Catholic religion, contrary to their mind, and often demanded her" of Gardiner, but he refused to return her, "standing upon audacious, peremptory terms." They then complained to Governor Stone, who found this "unsufferable dealing" of Gardiner "not only a great affront to the government and an injury to the girl's mother and uncle, but likewise of very dangerous and destructive consequence in relation to the peace and welfare of this Province." Therefore, he directed Banks, her stepfather, the commander of Newtown Hundred, to take such assistance as might be

[1] 10 Md. Arch., Prov. Ct., 270.
[2] Francis Brooke was fined on the next day for profane swearing in court, 10 Md. Arch., Prov. Ct., 276.
[3] 10 Md. Arch., Prov. Ct., 259, see 298. On Hatton see Davis, 200.
[4] 10 Md. Arch., Prov. Ct., 354, 356.

necessary, and using force if needful, to seize Elinor Hatton and to bring her before the Council "to be disposed of as shall be fit," and to arrest Gardiner and bring him also. If she were concealed, Banks was empowered to search Gardiner's house and any other place where he might suspect that he could find her. On April 10, 1654, all parties were brought before the court, and the child was ordered to be returned to her uncle, while no order was made with reference to Gardiner.[1]

In two cases we find that the court allowed the winner not only court charges but also a sum of tobacco for "his trouble and expense in attending the Court."[2] A suit was tried for payment for the "entertainment, with houseroom and diet," of "about 50 servants and storage for goods which came last year in Capt. Richard Husbands' ship."[3] In another case a Virginia judgment is set up and the hearing is respited till the next court, that a copy of the judgment might be procured.[4] Thus early did Maryland give full faith and credit to the judgments of the other colonies. In a third case the plaintiff sued[5] for two barrels of corn, and the "sheriff, on the defendant's behalf," alleged his sickness, desired respite, but "withal attested that the defendant confessed the debt," which was "payable at the Governor's house," and "desired that the corn might be sent for." The Governor, after hearing this rather remarkable speech, agreed, on the defendant's behalf, to satisfy Secretary Hatton, "who was willing to spare the plaintiff" the corn and to hold the defendant responsible for both the corn and the charges. As we hear no more of it, we may fairly surmise that Hatton was duly repaid.

Robert Brooke had certain timber of two men named Ketchmay[6] attached for their failure to provide him with

[1] Bozman, II, 492.
[2] 10 Md. Arch., Prov. Ct., 272, 276.
[3] 10 Md. Arch., Prov. Ct., 272.
[4] 10 Md. Arch., Prov. Ct., 270. No further record is found.
[5] 10 Md. Arch., Prov. Ct., 269.
[6] 10 Md. Arch., Prov. Ct., 277, 278, 367; see for a similar case 273. Two or three entries about the payment of sums of tobacco by divers men are found on 278, 279.

casks for his tobacco, because of which he alleged that he was damaged at least three thousand pounds of tobacco, as he had two great houses full of tobacco. One of these houses measured one hundred feet by thirty-two and the other ninety feet by thirty-two, and by long hanging therein much of the tobacco wasted, and a great part of it was blown down and spoiled during the latter end of winter. On April 11, 1654, one of the men had the attachment dissolved, so far as he was concerned, as Brooke had not appeared to make good his claim.

The same George Ketchmay was involved, however, in a very shameful case of adultery, for which the woman concerned was tried at the September court after the birth of an illegitimate child.[1] In April, 1654, she was discharged, as the crime was committed in Virginia, and no proceedings seem ever to have been taken against the man.

PROVINCIAL COURT, OCTOBER, 1653, AND FEBRUARY, 1653/4.

Between October, 1653, and February, 1653/4, we find a number of entries on the court records.[2] Several deeds of sale of cows were entered, especially one of a cow bought by Thomas Hatton from Richard Bennett and transferred to the herd of Mrs. Eure, Baltimore's sister, in return for tobacco received by Hatton from the sale of a bull and a steer sold for the lady at the Proprietary's direction.

Stone recorded a deed of his land[3] in Northampton County, Virginia, to Captain William Whittington, and two other deeds of land appear: one from Cornwallis of a neck of land, containing about one hundred acres, in his manor of Cornwallis Cross, for one thousand five hundred pounds of tobacco and cask and "a very good flitch of bacon," with a quitrent of "half a barrel of good Indian corn and a couple of poultry."

A bond,[4] two releases from debts, a demand from James

[1] 10 Md. Arch., Prov. Ct., 272, 276, 280 ff., 339, 340, 366.
[2] 10 Md. Arch., Prov. Ct., 298, 299, 301, 304. Earmarks are also entered, 10 Md. Arch., Prov. Ct., 301, 304, 308.
[3] 10 Md. Arch., Prov. Ct., 298, 300, 305.
[4] 10 Md. Arch., Prov. Ct., 300, 301.

Allen's estate for attendance on the decedent during his sickness,[1] powers of attorney,[2] depositions about the ownership of a sloop,[3] and an agreement to apprentice Blanche Howell for ten years to Thomas Copley and his successors, that is, the Jesuits, who shall not sell her to any other person,[4] are found. There was recorded a remarkable agreement between Thomas Wilford of Virginia and Paul Simpson.[5] In return for twenty thousand pounds of tobacco from Simpson, Wilford agreed to find him, during his life, "sufficient wholesome meat, drink, apparel, both linen and woolen, lodging, washing and other necessaries, well beseeming and fitting a gentleman and, when nails and carpenter can be had, to build him a 15 foot house square with a Welsh chimney, the house to be floored and lofted with deal boards and lined with riven boards on the inside, with a handsome joined bedstead, one small joined table and six joined stools and 3 wainscot chairs, and to furnish the said room with bedding, curtains and valance, chamber linen and all other things fitting and convenient." This room, whose location is not given, should be Simpson's home during his life, and he should be allowed a "servant to get him wood to burn in his chamber and to do him such service" as he shall command. In addition, Wilford agreed to buy for Simpson, "once every year during his life, one anchor of drams, a tierce of sack, and a case of English spirits, to be delivered to him at the time of shipping, for his own spending and drinking."

[1] Administration is granted upon the estate of Thomas Balmer of Patuxent, 10 Md. Arch., Prov. Ct., 307. Estates of Walter King, Jas. Allen, and Edward Shelley, in Cotton, Maryland Calendar of Wills.

[2] 10 Md. Arch., Prov. Ct., 303, 307.

[3] 10 Md. Arch., Prov. Ct., 304.

[4] 10 Md. Arch., Prov. Ct., 306.

[5] 10 Md. Arch., Prov. Ct., 302. On page 321 is a curious affidavit by Henry Bishop that John Hammond had given him a letter for Simpson, who was supposed to be in Virginia, and as Bishop did not cross the Potomac after all, he returned the letter to Hammond. Pakes came and Hammond read him the letter, whose contents Bishop has forgotten, and Pakes then asked Hammond what he should do and was answered, "You were best to go yourself to Simpson."

PROVINCIAL COURT, FEBRUARY, 1653/4.

The Provincial Court sat on three days in February[1] and was much occupied with the estate of John Stringer, carpenter, who died much indebted and whose estate was put in the charge of Rev. William Wilkinson. Mr. Wilkinson preached a funeral sermon, for which and for a funeral dinner he brought in a bill. A number of other creditors filed suits against the estate, the largest of whom, William Allen, merchant, was made administrator. A mortgage of land,[2] a deed of sale of a cow,[3] a deposition concerning the merchantability of certain tobacco, are the only other entries in February, save the suit of John Johnson and Thomas Adams against Colonel Francis Yardley, Nathaniel Batts, and Charles Thurston for the seizure of their vessel in the Potomac River.[4] Yardley answered that he seized the vessel because she came lately from trading at the Dutch plantations, but neither he nor his accomplices in the act proved to the satisfaction of the court that the vessel could be a lawful prize, or that they had any lawful warrant to take her. The ship had been for two months at Accomac, and came to Maryland freighted with cattle belonging to people who lived there. One or both of the owners were inhabitants of Virginia who came up to Maryland with intent to "seat within this Province." None of the Dutch nation had any interest in the vessel, and the court apprehended for "very sufficient reasons that this enterprise was merely undertaken and grounded, upon a malicious quarrel," so the vessel and its contents were ordered to be restored to the plaintiffs and a threefold satisfaction to be paid by Yardley, "who takes the business wholly upon himself," if any goods

[1] 10 Md. Arch., Prov. Ct., February (1) 309, (6) 311, (15) 313 (Wm. Waring, formerly a freeman, had covenanted to serve Stringer three years on condition that he be taught the carpenter's trade, and he is now discharged), 328, 330, 333, 352, 360, 361, 369, 379, 384, 395. Estates of Anne Brooks and Thomas Pitts, Cotton, Maryland Calendar of Wills.

[2] 10 Md. Arch., Prov. Ct., 310.

[3] 10 Md. Arch., Prov. Ct., 317.

[4] 10 Md. Arch., Prov. Ct., 312. Batts was Yardley's interpreter, 10 Md. Arch., Prov. Ct., 347.

have been embezzled. Yardley must pay three thousand pounds of tobacco and cask as fine to the Proprietary and also the costs. Batts, "a main instigator and actor in this business," must pay a fine of one thousand pounds of tobacco and cask or receive thirty-nine lashes. Thurston, however, acknowledged his offence, alleged that he was "ignorantly drawn into the attempt, by the Colonel's information that the same was approved of by the Governor and justifiable, and had formerly carried himself unreproveably," so that he was discharged.

Provincial Court, March, 1653/4.

A term of court, beginning March 1, 1653/4, lasted for five days.[1] In April the court sat on the tenth and eleventh and again for a short while on the twenty-eighth. On March 6 the record reads that "after the governor and council (present this day) had for some time sat in consultation about some affairs in relation to the public safety, they fell upon hearing of some particular causes." We wonder what the "affairs" were, for the position of the Council was a troublous one; but, as we are ignorant of them, we must turn to the "particular causes."

During these months we find the usual routine business,[2] as if there were no "affairs in relation to the public safety." Earmarks are registered,[3] cattle are sold[4] and their ownership is claimed,[5] powers of attorney are filed,[6] judgments confessed,[7] nonsuits decreed,[8] cases postponed,[9] a testamentary

[1] 10 Md. Arch., Prov. Ct., March (1) 321, (2) 325, (3) 332, (4) 338, (6) 346.

[2] 10 Md. Arch., Prov. Ct., 348, 356, 362, 370, 378. Medley asks allowance for his great charge in keeping Robert Greene, request referred to Assembly, 10 Md. Arch., Prov. Ct., 369.

[3] 10 Md. Arch., Prov. Ct., 319, 322, 370, 377.

[4] 10 Md. Arch., Prov. Ct., 318, 319, 320, 351, 355.

[5] 10 Md. Arch., Prov. Ct., 337, 340, 341.

[6] 10 Md. Arch., Prov. Ct., 322, 336 (by Simon Groves of New England, tobacco roller), 347, 352, 356, 357, 358, 367, 368, 370.

[7] 10 Md. Arch., Prov. Ct., 319, 320, 321, 322, 324, 328, 329, 331, 332, 333, 335, 338, 343, 355, 359, 361, 364, 366.

[8] 10 Md. Arch., Prov. Ct., 338, 346, 369, 370.

[9] 10 Md. Arch., Prov. Ct., 328, 332, 334 (cases where the defendant did not appear and therefore postponed), 344, 345, 356, 359, 365, 367.

matter is determined,[1] a warrant issued,[2] attachments are laid,[3] receipts and releases filed,[4] witness fees allowed,[5] bonds recorded.[6] A charge of bastardy is made.[7] A fugitive servant has her term of service lengthened,[8] a second servant is granted his "clothes, corn, &c" out of his master's estate,[9] a third servant has been lent by Clarke to Boreman and has run away from the latter in Virginia, for which escape recompense is made to Clarke.[10] Richard Moore requests that the line be run between his plantation and that of the children of Anthony Rawlings, for their stepfather, Michael Baisey, molests Moore, threatens to take his land from him and burn his house, and twice refused to let Clarke, the Surveyor, run the line, so that Moore may know what properly is his right and "may live quietly in his last age."[11] The court directs that the survey be perfected, and that, if the Rawlings children have cause of complaint, "they may apply themselves to the Court for relief." Extents are granted in two cases for the value of a debt,[12] in one of which cases, as the land was a manor, three men were appointed to determine how many years the creditor should have the land in payment of his debt.

John Hammond[13] sues Cuthbert Fenwick for damage to his horse and its furniture. He claims that one evening he and his wife, while riding to Patuxent, came to Fenwick's house. The latter asked for the loan of the horse, but was denied, as Hammond expected to return suddenly and so delivered his horse to another to take care of it, until

[1] William Stephenson's estate, 10 Md. Arch., Prov. Ct., 332.
[2] 10 Md. Arch., Prov. Ct., 346.
[3] 10 Md. Arch., Prov. Ct., 324, 332, 343, 346, 364, 368, 369.
[4] 10 Md. Arch., Prov. Ct., 349, 350, 352, 353, 356.
[5] 10 Md. Arch., Prov. Ct., 369.
[6] 10 Md. Arch., Prov. Ct., 349, 351 (of Thomas Ringe, a smith), 354. Judgment given for plaintiff, but as he neglected to prosecute, he pays costs, 361.
[7] 10 Md. Arch., Prov. Ct., 337.
[8] 10 Md. Arch., Prov. Ct., 322.
[9] 10 Md. Arch., Prov. Ct., 335, 370.
[10] 10 Md. Arch., Prov. Ct., 331, 335, 366.
[11] 10 Md. Arch., Prov. Ct., 330.
[12] 10 Md. Arch., Prov. Ct., 345, 360.
[13] 10 Md. Arch., Prov. Ct., 339, 367, 386.

his return from the other side of the river. The next morning Fenwick took away the horse and detained it five weeks and four days, in spite of many messages. Finally, he sent it back, detaining a carpet, and with the bridle changed, the saddle torn to pieces, one stirrup, no girth or saddle cloth. He refused to make any satisfaction. As a result of the suit Fenwick is obliged to pay damages and costs.

William Nugent sues Richard Watson for damages received from Watson's not performing his agreement to build a house twenty feet long for Nugent.[1] The defendant denies the bargain and the matter is referred to a jury, which hears testimony and gives the plaintiff a verdict for three hundred pounds of tobacco and costs.

Henry Fox petitions that Philip Land may be ordered to give a speedy account and satisfaction touching their partnership estate, and Land agreeing thereto, the matter is referred to two arbitrators, who might choose an umpire if they could not agree.[2]

Among the numerous cases of these two months are a number in which the payment of debts is demanded.[3] Most of these have but little interest. One of the more interesting ones is the suit of Walter Pakes against John Hammond[4] to recover the purchase money for the plantation which he sold Hammond. The latter alleged certain false pretences and the business was put to arbitration, with

[1] 10 Md. Arch., Prov. Ct., 345, 363. On 351 is a curious deposition about a case of strong waters brought by Capt. Husbands from England for Thos. Hatton, but broken open and the contents of the bottles drunk out or spilt on the voyage.

[2] 10 Md. Arch., Prov. Ct., 343.

[3] 10 Md. Arch., Prov. Ct., (1) 323, 381; (2) 331, 276 (Fenwick v. Mitchell, latter sent with tobacco to Holland in March, 1651/2, to give it to Lawrence Coughen, which he never did. Judgment was given); (3) 332; (4) 334, 370, 387; (5) 336; (6) 336, 337, 365; (7) 347, 351 (a parcel of sugar); (8) 341, 366, 385 (suit against Lawrence Starkey, successor to Thos. Copley, deceased); (9) 342; (10) 357; (11) 358 ("a good hog with corn sufficient to feed him withal till he were delivered in Virginia"); (12) 358 ("2 sides of bacon"); (13) 359; (14) 362; (15) 346, 364, 391 (for two voyages from Virginia for Yardley to his plantation in Maryland); (16) 364; (17) 364, 365, 385; (18) 368 (a pair of brass shot moulds); (19) 373 (Giles Brent's bill of 1648).

[4] 10 Md. Arch., Prov. Ct., 344, 385.

the consent of both parties, but Hammond delayed so long that Pakes brings suit. Hammond alleges that he had acted as Pakes's attorney in a difference the latter had with Simpson, and that Pakes, in return for this service, remitted the remainder of the purchase price. He cannot prove, however, that he had not rendered his service gratis, and the matter is postponed and settled out of court.

Provincial Court, May and July, 1654.

The Provincial Court met on May 23 and 24 and on July 16,[1] and the proceedings are as full of routine and as free from signs of impending change as possible. Sales of crops,[2] testamentary matters,[3] bonds,[4] assignments,[5] releases,[6] postponements of hearings,[7] powers of attorney,[8] earmark registry,[9] a gift of cattle for the maintenance of a minister in the neck of Wicocomoco and for the poor and for other pious uses of the parish,[10] a commercial protest,[11] attachments,[12] acknowledgment of debt,[13] or confession of judgment,[14] a few debts,[15]—these are the matters recorded on the eve of Baltimore's loss of the Province. Two fugitive servants were sent back to their master, from whom

[1] 10 Md. Arch., Prov. Ct., 382, 383, 391, 396.
[2] 10 Md. Arch., Prov. Ct., 380, 392.
[3] Thomas Copley's estate, 10 Md. Arch., Prov. Ct., 385, Francis Posey's estate 378, 382, John Winbridge's estate 395, Richard Moore's estate 395, 396, 400, 433, 442. July 6, Peter Godson, surgeon, about to marry Moore's widow (Moore was in court on April 10), agreed to lay no claim to Moore's estate, but to leave it to Moore's children. Estate of Geo. Rapiar, 391.
[4] 10 Md. Arch., Prov. Ct., 378, 379.
[5] 10 Md. Arch., Prov. Ct., 379.
[6] 10 Md. Arch., Prov. Ct., 379, 380.
[7] 10 Md. Arch., Prov. Ct., 382, 387.
[8] 10 Md. Arch., Prov. Ct., 382, 388, 397, 398 (Cornwallis, dated July 3).
[9] 10 Md. Arch., Prov. Ct., 393, 394.
[10] 10 Md. Arch., Prov. Ct., 393. Davis, 146.
[11] 10 Md. Arch., Prov. Ct., 394.
[12] 10 Md. Arch., Prov. Ct., 382, 387, 391, 441.
[13] 10 Md. Arch., Prov. Ct., 397.
[14] 10 Md. Arch., Prov. Ct., 387.
[15] 10 Md. Arch., Prov. Ct., 382, 383 (for tobacco and a smoothing iron), 386, 389, 391 (for two anchors of drams to each of two men), 397.

they had run away after correction for just cause,[1] two contracts of service were upheld, as was an indenture which provides for a grant to the servant of fifty acres of land only, without the usual corn or clothes.[2] These things show how important an element in Maryland were the indentured servants.

Provincial Court, October, 1654.

Just before the session of the Assembly, the Provincial Court came together on October 16, 1654, six of the Parliamentary Commissioners being present.[3] There is nothing in the proceedings to show the change of government, but everything is transacted according to the former rules. Dr. Peter Godson acknowledged himself sorry for having accused a woman of being a witch, and paid the charges of a suit against him.[4] Mrs. Godson was also sued for slander, and was bound over for good behavior,[5] and Mrs. Brooke was ordered to pay costs for saying, without being able to prove it, that another woman "had beaten her maid two hours by the clock."[6] There may have been some ground for her charges, however, for on April 24, 1655, a maid-servant, who had run away from the woman accused of cruelty, complained of "extreme usage" and expressed "great fear" of returning to her service, "because of such rigor," so that the court set her free, decreeing that she should lose the corn and clothes she should have received at the expiration of her term of service and should give security to pay her late master "500 lb. tobacco and cask at the first crop ensuing." A collection of six hundred pounds of tobacco was immediately taken up for her in the court.

At this October term another servant successfully complained to the court that his master did not give him suffi-

[1] 10 Md. Arch., Prov. Ct., 396.
[2] 10 Md. Arch., Prov. Ct., 356, 379, 381, 382.
[3] 10 Md. Arch., Prov. Ct., 398.
[4] 10 Md. Arch., Prov. Ct., 399.
[5] 10 Md. Arch., Prov. Ct., 402, 403, 409.
[6] 10 Md. Arch., Prov. Ct., 401, 402, 416.

cient clothing,[1] and a third received an order that his master should give him "his corn and clothes," as his term of service had expired.

A man was given a small penalty for assault and battery upon a woman,[2] affidavits were filed concerning the illegal killing of hogs,[3] and concerning thefts by a maid from her mistress. A man successfully maintained his right to a bed which had been given him in England before he came to Maryland as an indentured servant;[4] a non-resident was committed to the sheriff's custody till he should pay a debt or give security for it; a case was referred to the Assembly, as an important party "hath been long absent and is to be present" then;[5] and a man recorded a deed of a two-year-old heifer to his daughter in exchange for five hogs.[6]

Dr. Peter Godson demanded one thousand four hundred and thirty pounds of tobacco from the husband of one of his patients "for physic and surgery," and expert testimony having been used for the first time in the Province, the account[7] was "examined by men of the same faculty and regulated to 590 lbs. tobacco," for which account judgment was given. Mr. Preston, the new Secretary, was empowered to hear a suit for debt, in which the defendant could not appear at the court, "through infirmities of body." If sufficient answer should not be shown Preston within a fortnight, execution should issue upon the bill.[8]

A man was ordered to give security to deliver another man four rights of land due him.[9] Francis Brooke was ordered to pay costs of a suit brought against him by Isaac Ilvie of Kent Island, who charged that his possession of

[1] 10 Md. Arch., Prov. Ct., 401, 406.
[2] 10 Md. Arch., Prov. Ct., 400, 401, 404, 422. For miscellaneous entries: subpoena 405, postponement 405, acknowledgment 404, witness fees 401, 403, nonsuits 403, 404.
[3] 10 Md. Arch., Prov. Ct., 402.
[4] 10 Md. Arch., Prov. Ct., 403.
[5] 10 Md. Arch., Prov. Ct., 404.
[6] 10 Md. Arch., Prov. Ct., 406. Earmarks filed on same page.
[7] 10 Md. Arch., Prov. Ct., 399.
[8] 10 Md. Arch., Prov. Ct., 401. For another contract case see 403.
[9] 10 Md. Arch., Prov. Ct., 401.

two hundred acres, called Beaver Neck, was disturbed by Brooke, pretending a grant from Baltimore and power from the Governor, which do not appear.[1] Philip Connors, the commander of the Isle of Kent, was directed to cause the sheriff to give Ilvie quiet possession of his land. John Hambleton demanded a sum of tobacco from Fenwick, who replied that the debt was paid by a sale of land he had made Hambleton, but the latter did not acknowledge the bargain; after some debate in court, the parties agreed to refer the whole matter to "the arbitration of two indifferent men."[2]

Two estates of decedents came before the court,[3] one of them owing a number of debts, among which were charges for physic in the time of the man's sickness and for "his winding sheet and burying of his corpse."

Court Business, December, 1654, to April, 1655.

The only winter session of the Provincial Court occurred[4] on December 5, 1654, when five Commissioners, headed by Preston, were present. The proceedings contain little of interest. Constables were appointed, and John Hammond, who had agreed to build at his own cost a suitable court-house for "St. Mary's and Potomac Counties" alongside of his house as the most convenient place for the "keeping of courts," was granted, in return for his public spirit, license to retail wine and strong liquors and to keep a "ferry for the convenient passage of people over Newtown River."[5] A woman failed to prove a charge of rape, and the same woman's husband failed in proving a charge of some sort against another woman with whom his wife had quar-

[1] 10 Md. Arch., Prov. Ct., 404.

[2] A man was ordered to pay for damages his wife had occasioned her former master, 10 Md. Arch., Prov. Ct., 405.

[3] Thomas Connery, 10 Md. Arch., Prov. Ct., 406, 449, Thomas Trumpeter, 398, 399, 400, 401. Thomas Harris and William Jones, Cotton, Maryland Calendar of Wills.

[4] 10 Md. Arch., Prov. Ct., 407.

[5] 10 Md. Arch., Prov. Ct., 410; witness fees, 407, 408, 409; postponements, 407–410; earmarks, 412; bond, 408, 412; crop sales, 412; power of attorney, 408; rights to land, 407, 408, 409, 410; attachments, 407, 410; confession of judgment, 407.

reled.[1] A few cases of debt,[2] one entry allowing Preston a sum out of the Provincial levy in return for his paying a bill,[3] and the care of the estate of Samuel Griffin[4] complete the court business at this time.

The most important business of the April court was the trial of various persons for acts committed during the war of 1654. Other business was of a routine character. Several estates of decedents were brought before it,[5] one being Cuthbert Fenwick's, and another that of Thomas Hebden, who had died several years previously, leaving all his property to his wife by will, but making a deed of trust of certain property for the use of the Jesuits, concerning which property certain difficulties had arisen with Mrs. Hebden, but were now settled. Mrs. Hebden seems to have practiced medicine, and recovered a sum for "physic charges."[6]

Provincial Court, June to September, 1655.

When the Provincial Court met at Patuxent, on June 26, 1655, five Commissioners were present. Thomas Mears and Thomas Marsh were added as Commissioners, since "the attendance of divers members of this court is taken off and by reason of their several occasions and employments calling them at present out of the Province."[7] On August 13 six members were present, and Captain Sampson

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[1] 10 Md. Arch., Prov. Ct., 407, 408, 409, 411.

[2] 10 Md. Arch., Prov. Ct., 408, 415. Security given, 407, 408, 409, 411. Nonsuit, 408, 409, 410.

[3] 10 Md. Arch., Prov. Ct., 409.

[4] 10 Md. Arch., Prov. Ct., 409, 410, 414, 433, 450.

[5] 10 Md. Arch., Prov. Ct., Cuthbert Fenwick 413, 431, 451, 473, George Dolt 415, Jas. Memeis 415, Thomas Hebden 46, 418, 4 Md. Arch., Prov. Ct., 512. Attachments, 10 Md. Arch., Prov. Ct., 417. Debts 414 (Cornwallis), 415, 416, 417 (for a boat borrowed). Estates of Ralph Beane, John Hodges, Mrs. Peter Godson, Richard Lawrence, in Cotton, Maryland Calendar of Wills. Witness fees, 10 Md. Arch., Prov. Ct., 416, servant's corn and clothes 415.

[6] 10 Md. Arch., Prov. Ct., 415, 422.

[7] 3 Md. Arch., Coun., 316; 10 Md. Arch., Prov. Ct., 419. The court made a decree with reference to a contract to make tobacco hogsheads, and later an attachment was granted upon the order, 10 Md. Arch., Prov. Ct., 449.

Waring, Michael Brooke, John Pott,[1] and Woodman Stockley were "added" to the number of Provincial Commissioners. Leonard Strong, merchant, had gone to England,[2] to publish "Babylon's Fall" and to die, and the remaining Commissioners assumed the right to add to their number from time to time. In the records for August 13 we find Fuller is styled Governor. On that day an order was made for the captains of the trainbands of Patuxent to summon all the people forth for military exercise. Those not appearing should be fined and disarmed if obstinate. The public arms lent to individuals must be returned, unless in the possession of persons "well affected to the present government" and "fit to be confided in."

On August 22 the court met again,[3] five Commissioners being present and Fuller presiding. The sheriff was given power to distrain the goods of such persons as should refuse to pay public dues, and a bond is recorded, as is a deed of gift of bedding, a fowling-piece, and an iron pot from a woman about to marry again to the son of her first husband.

In October a more important three-day term of court was held,[4] and the court came together again for one day late in December. Fuller was not present at this last court, and his frequent absences show that he was regarded as President of the Commissioners, rather than as Governor. A man who had killed another's sow was ordered to replace her with one of like value.[5] Dandy's wife was forced to apologize to one John Milam for scandalizing him by saying, "You would hang up men at the yard's arm, for there

[1] 3 Md. Arch., Coun., 317, says Robert Pott.
[2] 10 Md. Arch., Prov. Ct., 440.
[3] 10 Md. Arch., Prov. Ct., 419.
[4] 10 Md. Arch., Prov. Ct., October (3) 420, (5) 423, (8) 428, December 26, 430; earmark recorded 437, nonsuits 429, 435, postponements 429, 435, powers of attorney 430, 433, discharge of debts 421, confession of judgment 422, attachments 427, bonds 424, 430, 436, 437 (two, one by Starkey for goods bought with itemized bill, and one by Job Chandler to a London merchant for 1100 muskrat skins), 438 (Sir Henry Chicheley to Cornwallis), grant of land 432, debts 428, 429, 431, 433–436.
[5] 10 Md. Arch., Prov. Ct., 420, 421; for title to hogs see 433.

is no law in the country." He was obliged to "acknowledge his miscarriage" and pay court charges for arresting her for felony without proof. Milam was a merchant, and Dandy was ordered to pay him for goods stolen from Milam's store by one of Dandy's servants. Several testamentary matters were determined, the estate of one man in particular, John Crabtree, causing considerable trouble.[1] Smith, the muster master general, also died, and the sheriffs were directed to collect and pay his widow the four pounds of tobacco per poll directed to be paid him by act of Assembly. A man-servant,[2] who "last served the public," was "allowed his corn and clothes from the public account of fines," and two others were seized and sold to pay a fine to the public owed by their master.[3] Two men were accused of using threatening language, and one of them was fined therefor and for swearing.[4]

One of the medical profession was in bad odor at these courts. Godson was convicted of stealing a bodkin and concealing it, and was made to restore its value fourfold and pay costs. He was also charged by Peter Sharp, chirurgeon, of killing Captain Smith "by taking too much blood from him."[5] The matter was referred to the next court, "when men of skill and ability shall judge of the action," but we hear no more of it. In a third case a man complained that he had paid Godson tobacco for a cure, but the latter "left him worse than he found him."[6] The court ordered him to make a cure or repay the tobacco, and as he failed in the former, he was forced to return the tobacco.

The aftermath of the war is seen in the court records in these months. Stone's estate in Patuxent had been sequestrated and put into William Dorrington's hands to look to,

[1] 10 Md. Arch., Prov. Ct., 420–424, 431, 438, 453, 469, 474, 478, 485, John Ramsay's estate 422, John Smith's estate 432, 440, 441, 452.
[2] 10 Md. Arch., Prov. Ct., 431, 433, 436.
[3] For servants see 10 Md. Arch., Prov. Ct., 432, 434 (corn and clothes come after the master's debts to the public are paid).
[4] 10 Md. Arch., Prov. Ct., 421–423.
[5] 10 Md. Arch., Prov. Ct., 424, 432.
[6] 10 Md. Arch., Prov. Ct., 434, 439.

till it should satisfy "the public damage upon his late rebellion,"[1] and in October, Dorrington is cautioned to see that nothing be carried away and is directed to "require aid and assistance to suppress any such riot, or force, and to repell it," if "any should come by force to disturb" him in the possession of the estate. Stone was out of the Province and had no attorney in Maryland, so when John Sutton and Peter Johnson sued him because of false imprisonment for eighteen days, they were granted attachments on Stone's goods.[2] Other attachments[3] were laid on Stone's estate to pay Peter Sharp for "divers arms and provisions" taken from his house by Stone's soldiers and to pay the claims of four other men, one of whom furnished five guns. Preston, another of them, claimed that Fendall had taken guns, etc., from his house.

James Berry was "convicted of several subscriptions against the present government, tending to set up and abet a false and usurped power" of Captain Stone, and was fined the usual two thousand pounds of tobacco, but half of the fine was remitted.[4]

Robert Taylor was convicted of subscribing to a petition against the Puritan government, and was fined one thousand pounds of tobacco,[5] while William Bramhall, who had been convicted, probably by the Anne Arundel County court, of signing "a rebellious petition," had signed another such petition and was ordered to be at the charge of building a pair of stocks within a month.[6] At some time or other Captain John Price had been fined thirty thousand pounds of tobacco, "in relation to his rebellion with Captain Stone," and he pleaded[7] that he was "ancient" and his estate not able to pay the said fine, which was thereupon reduced to

[1] 10 Md. Arch., Prov. Ct., 422.
[2] 10 Md. Arch., Prov. Ct., 423, 424.
[3] 10 Md. Arch., Prov. Ct., 425–427, 433.
[4] 10 Md. Arch., Prov. Ct., 423–425.
[5] 10 Md. Arch., Prov. Ct., 424, 425.
[6] 10 Md. Arch., Prov. Ct., 424.
[7] 10 Md. Arch., Prov. Ct., 425. Thos. Trueman had been fined five thousand pounds, 433.

ten thousand pounds, as Owen James's was reduced from five thousand to three thousand pounds[1] and Henry Parnell's from five thousand to four thousand pounds.[2] Job Chandler had been fined fifteen thousand pounds of tobacco,[3] and William Ewen's fine of two thousand pounds was reduced one half.[4] John Jarboe and James Langworth had acted with Captain Stone "in the late Rebellion" unwillingly, and were fined only one thousand pounds of tobacco each.[5]

A number of men openly in court confessed themselves to be Roman Catholics. Of these Lieutenant William Evans seems to have been fined three thousand three hundred pounds of tobacco;[6] Robert Clarke, ten thousand pounds;[7] Thomas Matthews had merely to give surety for his good conduct;[8] William Boreman had his "public offence" remitted, as he submitted "himself to the mercy of the Court," but was fined one thousand pounds of tobacco "towards the damage sustained" by reason of the rebellion;[9] John Dandy also threw himself on the mercy of the court, and was fined two thousand pounds, but had eleven guns and ten locks returned to him;[10] John Pile seems to have suffered nothing.[11]

Mr. Batten's servant, taken captive by Stone and his men, was ordered to be restored to his master.[12] In December a petition of John Norwood, sheriff of Providence, was

[1] 10 Md. Arch., Prov. Ct., 426.
[2] 10 Md. Arch., Prov. Ct., 428.
[3] 10 Md. Arch., Prov. Ct., 428.
[4] 10 Md. Arch., Prov. Ct., 429.
[5] 10 Md. Arch., Prov. Ct., 429.
[6] 10 Md. Arch., Prov. Ct., 423, 424.
[7] 10 Md. Arch., Prov. Ct., 425, 426. He turned over a plantation in part payment of the fine, but in March, 1655/6, it was returned to him, as he had no other means of subsistence for himself and his children. If he should ever sell it, half the proceeds must be paid the Province, 441. Later the court remitted Clarke's fine to the public, provided he pay the sheriffs' fees, 534, 558.
[8] 10 Md. Arch., Prov. Ct., 426.
[9] 10 Md. Arch., Prov. Ct., 427.
[10] 10 Md. Arch., Prov. Ct., 429.
[11] 10 Md. Arch., Prov. Ct., 429.
[12] 10 Md. Arch., Prov. Ct., 426.

granted that he might distrain upon the estates of several who were indebted for charges while they were his prisoners after the battle of the Severn.[1]

Provincial Court, 1656 to May, 1657.

On the very last day of December, 1655, Sampson Waring gave bond as sheriff and James Veitch as deputy sheriff of the counties of Patuxent, St. Mary's, and Potomac.[2] No session of the court was held until March 20, 1655/6, when four Commissioners met, Fuller presiding.[3] The court met again on April 10 with four Commissioners under Preston's presidency.[4] The sixteenth of June saw the next session with Preston in the chair.[5] An autumn session of four days was held in September, at which Fuller was present,[6] and a second one in October, at which Preston presided.[7] During the winter a court was held in January with Preston as president[8] and one in March, 1656/7, partly under the same presidency[9] and partly under Fuller's. A later session, of unknown date, was held, with seven Commissioners present, under Fuller's presidency,[10] and one met in May under Preston's presidency.[11] During all this period of a year and a half the Provincial Court records are our only source of information as to conditions in the Province. In this time the estates of a number of deceased persons, some of whom were of considerable importance, came before the court,[12] and the usual routine went on. There was little to

[1] 10 Md. Arch., Prov. Ct., 430. Wm. Evans, Thos. Trueman, Wm. Stone, Job Chandler, Ed. Packer, Geo. Thompson, Robert Clarke, Henry William, Jno. Cosey. See 435 for order of execution against all who shall refuse or delay to pay public fines.

[2] 3 Md. Arch., Coun., 318; 10 Md. Arch., Prov. Ct., 435, 436.

[3] 10 Md. Arch., Prov. Ct., March (20) 438, (21) 439, (22) 441.

[4] 10 Md. Arch., Prov. Ct., 445.

[5] 10 Md. Arch., Prov. Ct., June (16) 448, (17) 451.

[6] 10 Md. Arch., Prov. Ct., September (22) 456, (23) 459, (24) 461, (25) 463.

[7] 10 Md. Arch., Prov. Ct., October (20) 466, (21) 467.

[8] 10 Md. Arch., Prov. Ct., January (12) 472, (13) 474.

[9] 10 Md. Arch., Prov. Ct., March (10) 481, (20) 486, (21) 488.

[10] 10 Md. Arch., Prov. Ct., 492.

[11] 10 Md. Arch., Prov. Ct., May (14) 499, (15) 504.

[12] Francis Vandan 438, 450, 454, 462, 463, Peter Johnson 439, Ben-

distinguish the court in the Puritan days from the same body in the time when the Proprietary's power was recognized. The bulk of the business is made up of the registration of earmarks,[1] of gift,[2] mortgage,[3] or sale of cattle,[4] of suits on ground of unfulfilled contracts and unpaid debts,[5] or those paid in rotten tobacco,[6] of the filing of bonds and mortgages,[7] receipts and discharges,[8] protests,[9] and powers of attorney.[10] Many orders of postponements,[11] allowances for witness fees,[12] and judgments of non-suit[13] are found. Numerous attachments are laid.[14]

On March 21, 1655/6, as Durand was absent from the Province upon urgent occasion,[15] the Commissioners appointed Preston their Secretary. He had a miscellaneous lot

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jamin Gill 441, 450, William Edie 441, John Preuce 441, John Norman 451, George Willard 452, William Nugent 453, John Barriff 458, 459, 463, 466, 467 (December, 1657), Friendship Tongue 473, Andrew Scott 479, 494, Thomas Ayer 479, 494, Edward Beasley 479, 483, William Gibbins 480, 482, 485, Thomas Marsh 486, Father Lawrence Starkey 489 (administration given to the greatest creditor), William Eltonhead 503, 523, 553, John Pritchard 505, 551, 552 (Rev. Wm. Wilkinson obtained the residue of the estate for the maintenance of Pritchard's child in January, 1657/8), Thomas Hatton and wife 510, 551, 557, 558, Valerius Leo 483, Andrew Hanson 487.

[1] 10 Md. Arch., Prov. Ct., 444, 472, 482, 491.

[2] 10 Md. Arch., Prov. Ct., 447, 448, 456, 470, 485, 486, 495.

[3] 10 Md. Arch., Prov. Ct., 453, 454.

[4] 10 Md. Arch., Prov. Ct., 498.

[5] 10 Md. Arch., Prov. Ct., 438, 440, 441, 445, 446, 448, 449, 458, 459, 467–469, 471, 473, 475, 476, 478, 480 (a jury trial), 481, 483, 489, 493, 495 (the "Jew's" Store, the first reference to that race in the Province, probably refers to David Farrera, merchant), 482, 489, 490, 491, 498, 500, 501, 504, 509.

[6] 10 Md. Arch., Prov. Ct., 462, 475.

[7] 10 Md. Arch., Prov. Ct., 446, 447, 474, 480, 491, 497, 510, 511.

[8] 10 Md. Arch., Prov. Ct., 442, 447, 479, 497, 498.

[9] 10 Md. Arch., Prov. Ct., 442, 443.

[10] 10 Md. Arch., Prov. Ct., 443–446, 449, 453, 455, 456, 472.

[11] 10 Md. Arch., Prov. Ct., 445, 449–452, 455, 460–463, 466, 468, 476, 479, 483, 494.

[12] 10 Md. Arch., Prov. Ct., 451, 453, 474, 475, 487, 488.

[13] 10 Md. Arch., Prov. Ct., 439–442, 450, 451, 459, 460, 470, 476, 478, 479, 483, 491, 494, 496, 501, 502, 504, 506.

[14] 10 Md. Arch., Prov. Ct., 440, 445, 449 (negro mentioned 461), 492, 500, 503; especially Seamer v. Billingsley, 476, 502, 521–523, case finally referred to arbitrators and decided by them September, 1657. See also Bagby v. Morley, 438, 448, 449, 458.

[15] 10 Md. Arch., Prov. Ct., 442.

of matters to record, interspersing deeds[1] and suits concerning land with questions referred to arbitration,[2] questions as to title to cattle,[3] questions as to the condition and building of housing and fencing.[4] A ferryman is ordered to be paid out of the public levies for transporting people over the Patuxent,[5] a list of the inhabitants in Patuxent and Potomac Counties is directed to be taken,[6] a charge is laid of killing a steer wrongfully,[7] a sheriff is fined for not summoning a defendant,[8] and his bondsman's heirs are freed from the obligation of their security.[9] Maryland hogsheads were larger than those from Virginia, which produced difficulties, and a standard gauge of "43 inches in length and 26 inches over the head" was established.[10]

In the spring of 1657, as the number of Commissioners was small, owing to death and absence, they added to their body six more, namely, Captain Philip Morgan, Mr. William Ewens, Mr. Thomas Thomas, Lieutenant Philip Thomas, Mr. Samuel Vethers, and Lieutenant Richard Woolman.[11]

One accusation of theft[12] is mentioned, and a woman is accused of murdering her infant, but is freed because a jury of eleven women "searched" her body and gave verdict that "she hath not had any child within the time charged."[13] Francis Brooke, who had bought his wife from Captain Mitchell, was charged with beating her so cruelly, while she was pregnant, that she brought forth a dead child, but Brooke went scot free for some reason.[14] A woman accused her husband of abusing and defaming her, but was proved to have defamed him and to be pregnant, though she

[1] 10 Md. Arch., Prov. Ct., 443, 460. An assignment of a debt, 497.
[2] 10 Md. Arch., Prov. Ct., 441, 449.
[3] 10 Md. Arch., Prov. Ct., 452, a jury trial 465, 466, 470.
[4] 10 Md. Arch., Prov. Ct., 459, 476.
[5] 10 Md. Arch., Prov. Ct., 470.
[6] 10 Md. Arch., Prov. Ct., 470.
[7] 10 Md. Arch., Prov. Ct., 484, see 493.
[8] 10 Md. Arch., Prov. Ct., 488.
[9] 10 Md. Arch., Prov. Ct., 491.
[10] 10 Md. Arch., Prov. Ct., 492.
[11] 10 Md. Arch., Prov. Ct., 493.
[12] 10 Md. Arch., Prov. Ct., 439, but see 478.
[13] 10 Md. Arch., Prov. Ct., 456.
[14] 10 Md. Arch., Prov. Ct., 464, 466, 488.

had not lived with him for a long time.[1] Her suit was lost sight of, and in January, 1657/8, she was accused of abortion. Another case of adultery[2] was tried, in which a sentence was passed upon each of the defendants of twenty lashes, but the man's punishment was changed to a fine of five hundred pounds of tobacco, at the petition of "divers neighbors."

There were a number of cases involving slander and defamation of character. One who scandalously abused his master and confessed it received ten lashes.[3] A woman, guilty of slandering two other women by accusing them of theft, was committed till she acknowledge in open court that she had done them wrong and "put in security for her good behaviour."[4]

A man accused two others of being forsworn,[5] was ordered to ask them forgiveness in the face of the court and to pay a fine, which latter penalty was afterwards remitted. Another had aspersed the moral character of a man, his wife, and their son, and was condemned to be fined and to stand stripped from the waist upward by the whipping post and to give security for good behavior.[6] He was also charged with slandering a woman by accusing her of unchastity, but the conclusion of that suit has not been found.[7] In still another case the defendant took an appeal from the Kent court, but did not appear to prosecute and was fined for his failure to come.[8]

A separation a mensa et thoro, the first Maryland divorce, was granted to Cornelius Cannady and his wife on June 21,

[1] 10 Md. Arch., Prov. Ct., 501, 503, 504, 519, 555 (she was searched by a jury of women).
[2] 10 Md. Arch., Prov. Ct., 506, 521, 556, 558, 560.
[3] 10 Md. Arch., Prov. Ct., 439.
[4] 10 Md. Arch., Prov. Ct., 473, 478.
[5] 10 Md. Arch., Prov. Ct., 475, 478, 481, 483, 491, 502.
[6] 10 Md. Arch., Prov. Ct., 487, 488, 519, 555, 560. Is Matthew Smith's affidavit on 494 a slander?
[7] 10 Md. Arch., Prov. Ct., 495, 528, 555, 560. He accused her of undue intimacy with his Indian servant, and had said, if the servant's "oath could be taken in court, that he could say more in the same business."
[8] 10 Md. Arch., Prov. Ct., 493.

1656, after two men had vainly endeavored to reconcile them.[1]

Dr. Peter Sharp sued a man for seduction of his stepdaughter.[2] The young woman swore that she would not marry the man; but finally, as the defendant claimed that she had promised to marry him, a most curious agreement was drawn up between the parties. Sharp and his wife were unwilling to have the young people marry, but would consent if the woman cared to marry the man, so it was decided that, within fifteen days of the agreement, she was to be "conveyed to a house at the Cliffs and remain there for six weeks, during which time the defendant might have all freedom of discourse with her" provided he brought "one or more of the neighbors with him," and might "use all fair and lawful endeavors with her to marry." One or more of the neighbors must always be present when the defendant was in company with her, and he must pay for "her entertainment" during the whole time. Sharp agreed to put no hinderance in the way of the defendant's success, but to permit the marriage if his stepdaughter wished it. If she were not induced to agree to marry her lover within the six weeks, the latter agreed, "totally and absolutely," to discharge her from any former promise, and never afterwards "endeavor to gain the affection" of the young woman "or to procure any familiarity or discourse with her, or willingly to come into her company." If he married her, he promised that he would not "upbraid, or deride, or any other way exercise, or use any bitterness" to her for "any former passages between them," on penalty of becoming "incapable of intermeddling with or disposing of her estate." The former action was to be withdrawn, the defendant paying his own charges, and also the plaintiff's, if he won his bride; but if he lost her, Dr. Sharp was to charge these to the account of the stepdaughter. One wonders whether she married her lover or not?

[1] 10 Md. Arch., Prov. Ct., 449, 471. The name is probably the same as Kennedy.

[2] 10 Md. Arch., Prov. Ct., 499, 531.

Servants as usual occupied much of the court's attention. Two men, alleged to have escaped from Claiborne in Virginia, were ordered to be returned to him by the sheriff, who should press boat and men for that purpose.[1] Captain Mitchell gave bond[2] not to sell a maid-servant for the present,[3] as she swore he had brought her over to serve his children, and had promised that he would not sell her. There are suits concerning the length of service remaining unperformed,[4] the responsibility of paying the expenses of a sick servant,[5] and the payment of freedom-corn and freedom-clothes, which were dismissed.[6] We also find hired servants, who brought suits for wages,[7] and cruel masters who maltreated servants[8] and made them work on the Sabbath day.

Two sets of runaway servants were caught and brought before the court. They seem to have tried to get away to the Swedes in Delaware. The disposition of the first group of men is not stated, but three of the four prisoners in the latter group were whipped, while the fourth, who did not run away but was privy to the plans, was ordered to whip two of the three.[9]

Provincial Court, June to August, 1657.

During this period the Provincial Court continued to meet at Preston's house at Patuxent, and an Assembly was convened. Sessions of the court were held during the sum-

[1] 10 Md. Arch., Prov. Ct., 442.
[2] 10 Md. Arch., Prov. Ct., 442.
[3] 10 Md. Arch., Prov. Ct., 445, 446, 451, 463. Mitchell seems to have disposed of her after all, and to have tried to get her back again. He did recover another servant sold contrary to his orders by his agent, see 494, 496.
[4] 10 Md. Arch., Prov. Ct., 451, 472, 494–496.
[5] 10 Md. Arch., Prov. Ct., 452.
[6] 10 Md. Arch., Prov. Ct., 505.
[7] 10 Md. Arch., Prov. Ct., 473, 491, 496, 502, employer was to cure servant of a disease and give him one thousand pounds of tobacco and cask, a kersey or broadcloth suit, two shirts, two pairs of stockings, three pairs of shoes, and a barrel of corn or one hundred pounds of tobacco for a year's service, during which time the servant should also receive diet and lodging.
[8] 10 Md. Arch., Prov. Ct., 474, 482, 484, 488.
[9] 10 Md. Arch., Prov. Ct., 504, 511.

mer of 1657: on June 16, July 25, and August 17 and 22, at all of which Preston presided, with three or four other Commissioners as assessors. In addition to the usual records of sale and gift of cattle,[1] there is one testamentary matter[2] and a deed of land.[3] Two servants[4] were accused of forging a pass and were adjudged to receive twenty lashes apiece. One of them begged for pardon, and on motion of his accuser and upon promise of future good behavior his punishment was remitted, if he would whip his fellow criminal. A deposition was filed accusing a man of bastardy.[5] Against a woman who had left her husband in Virginia and had come to Maryland, where she lived in adultery, a penalty was decreed of twenty lashes upon the bare back, ten immediately at the court door and ten at the river side of Potomac.[6] The sheriff was ordered to deliver her on the Virginia side of the river to the officers there. The man with whom she lived in Maryland broke prison, ran away, and thus escaped punishment. Two fugitive servants were also ordered to be delivered by the sheriff into the custody of the Virginia officers, and he was "empowered to press boat and men to transport them over Potomac."[7]

Provincial Court, September, 1657, to February, 1657/8.

The most important business before the Provincial Court at this September session was the trial and conviction of John Dandy the smith,[8] an old-time offender, for the murder of his servant Henry Gouge. On July 7 Gouge's naked

[1] 10 Md. Arch., Prov. Ct., 514, 515, 517.
[2] 10 Md. Arch., Prov. Ct., 514, 519, Richard Harris's estate. His wife filed a caveat in June for administration and was appointed administratrix in September.
[3] Land situated in Virginia, but deed executed at Patuxent in 1655, 10 Md. Arch., Prov. Ct., 518.
[4] 10 Md. Arch., Prov. Ct., 517.
[5] 10 Md. Arch., Prov. Ct., 516. In January, 1657/8, the woman received thirty lashes for her wrong-doing.
[6] 10 Md. Arch., Prov. Ct., 515, 516.
[7] 10 Md. Arch., Prov. Ct., 515.
[8] 10 Md. Arch., Prov. Ct., 522, 524, 525, 534, 542, 546, 557.

body was found in the creek and clearly had not been drowned. Dandy had treated the servant cruelly, having inflicted a serious wound on his head with an axe some time previously, and the last time Gouge was known to be alive was when Dandy had been heard beating him at Dandy's charcoal kiln on the day before the body was found. When Dandy helped to turn the corpse, the old wound on the head and the nose bled, which was supposed to point out the murderer. The servant's clothes were never found. Dandy was arrested on August 7, but fled to Virginia, whence he was returned a week later. He claimed that he fled "to put himself into the custody of some in authority there, that there he might have his trial," for the government of Maryland "is not settled," and he had received hard usage from those in authority in the Province. A coroner's jury of eleven men, being as many of the neighbors as could be conveniently procured, was impanelled and sent with the sheriff and two chirurgeons[1] to disinter Gouge's body and try to determine the cause of death, but they made return that, owing to the decomposed condition of the body, they could make no report. Lieutenant Richard Smith was appointed Attorney General, and a special grand jury of twenty-four men brought in an indictment. On the next day, September 30, a jury was selected,[2] and after hearing the evidence, it brought in a verdict of guilty. The court thereupon sentenced Dandy to be hanged on Saturday, October 3, "upon the island at the mouth of Leonard's Creek in Patuxent River."

Two days before his death, his wife, Anne, petitioned the court that she might not be "left utterly destitute of competent subsistence"[3] for herself and her children, as Dandy's estate was forfeited "to his Highness the Lord Protector" by the conviction. The court seriously considered the matter, and ordered that after the sheriff had taken an inventory of the estate, she should remain possessed of it,

[1] Richard Maddox and Emperor Smith. They were allowed a hogshead of tobacco between them as a fee.
[2] Dandy objected to one man and another was substituted.
[3] 10 Md. Arch., Prov. Ct., 546.

provided that she pay out of it all charges and debts and give security "to give an account and be responsible for the overplus of the said estate," if called upon to do so.

Suits[1] for debt were entered by two men against Dandy on the same day, and Dandy's security on a previous suit asked to be released. On Monday, after the hanging, the court allowed the accounts of the Attorney General, sheriff, and clerk of court, of the man who provided diet for the prisoner and the juries, and of the man who guarded Dandy in Virginia and returned him to Maryland.[2] Later, accounts were allowed of the man who guarded Dandy during the trial.[3] Mrs. Dandy did not give security to be responsible for the estate, but was accused of having "embezzled and carried away" some part of it. The court therefore ordered the sheriff to secure the estate, seize anything that Mrs. Dandy might have carried away wrongfully, and bring her before the next Provincial Court. Dr. Maddox soon married Mrs. Dandy, and on January 1, 1657/8, was ordered to account for the estate.

At the September court we also find the usual number of cases of contract, several of them arising from the staple tobacco.[4] Some of the suits were brought against the estates of men who had died.[5] One deed of a cow,[6] a reconciliation,[7] a receipt,[8] a number of nonsuits,[9] postponements,[10] an acknowledgment,[11] a case of bastardy,[12] one of

[1] 10 Md. Arch., Prov. Ct., 545, 546, 548.
[2] 10 Md. Arch., Prov. Ct., 547.
[3] 10 Md. Arch., Prov. Ct., 557 (two debts were claimed at that time, 10 Md. Arch., Prov. Ct., 558, 559), see 553.
[4] 10 Md. Arch., Prov. Ct., 520–522, 525–527, 529–531, 553 (Mrs. Eltonhead; see Mrs. Anne Johnson's deed of gift on second marriage in Cotton, Maryland Calendar of Wills).
[5] 10 Md. Arch., Prov. Ct., Bartholomew Bloom, 534, 554; William Walworth, 520.
[6] 10 Md. Arch., Prov. Ct., 548.
[7] 10 Md. Arch., Prov. Ct., 522.
[8] 10 Md. Arch., Prov. Ct., 548.
[9] 10 Md. Arch., Prov. Ct., 521, 527, 528 (the court adjudged that the plaintiff had no cause of suit, and that the defendant "have in his recullisance wherein he was bound to appear, with cost of suit"), 529, 545.
[10] 10 Md. Arch., Prov. Ct., 522, 527.
[11] 10 Md. Arch., Prov. Ct., 528.
[12] 10 Md. Arch., Prov. Ct., 526.

slander,[1] and one of trespass on the case for the loss of a cow,[2]—such were the matters brought up for consideration. Full faith and credit were given to a Jamestown judgment, and execution was ordered upon it.[3] Servants gave rise to several cases. One man complained that the overseer "did inhumanly beat him" and exact that the servants should "beat their victuals," i. e., pound corn, in the night, and "that they often times want victuals."[4] The court ordered that the overseer forbear to beat the servant unlawfully, do not exact that he beat corn in the night-time, and provide sufficient diet for all the servants. In another case a man was fined for wrongfully detaining on Kent Island two fugitive servants.[5] A third case was one of disputed title to a servant between Edward Hodgkeys and Captain Fendall,[6] and in a fourth Durand was granted an order for a boy, Fendall's property,[7] who had been hired out to a planter and whom Durand claimed by an attachment.

At this term the Commissioners added to the number of their quorum[8] Messrs. Edward Lloyd, Michael Brooke, and John Hatch, as, by "death and absence of some of the Provincial Commissioners of the Quorum, the public affairs of this Province are not so attended" as they ought to be. During the last months of the Puritan regime the Provincial Court met at Patuxent,[9] their capital, on November 3 and 4, December 5,[10] 29, 30, and 31, January 1 and 30, and February 16, 17, and 18, always under Preston's presidency.

In November[11] a case of pretended marriage and other

[1] 10 Md. Arch., Prov. Ct., 528, 555.
[2] By some neglect of the defendant for want of delivery, after he had sold her to the plaintiff, 10 Md. Arch., Prov. Ct., 546, 552.
[3] 10 Md. Arch., Prov. Ct., 526.
[4] 10 Md. Arch., Prov. Ct., 521.
[5] 10 Md. Arch., Prov. Ct., 523.
[6] 10 Md. Arch., Prov. Ct., 527, see 560.
[7] 10 Md. Arch., Prov. Ct., 534.
[8] 10 Md. Arch., Prov. Ct., 529.
[9] 10 Md. Arch., Prov. Ct., 549, 554.
[10] 10 Md. Arch., Prov. Ct., 565.
[11] 10 Md. Arch., Prov. Ct., 549; bond 564, deed of cattle 565, receipts 563, discharges 564, mortgage 564, deed of mare 563, earmark

immorality stands out among the usual suits for debt[1] and the other petty entries. The court showed that it would uphold its dignity by fining a man for being drunk in court and another for being a common drunkard, as was shown by his being drunk for three days together, and for "several times profanely swearing in court."[2] At the December court a nuncupative will was accepted,[3] a servant assigned,[4] and four others shipped to Preston were refused by him.[5] The Jew doctor, Jacob Lumbrozo,[6] appeared in the court. A servant petitioned for his freedom, and a planter sued another because he did not sell him as strong a servant as he promised. In another case the hire of a servant by one man to another was disputed. Everywhere we see how important a part of the Provincial social life was the indentured service system.[7] Captain Mitchell appeared as an attorney, and it was objected that he was not qualified by the Statute of 3 James I, ch. 7, the first exact reference I have found to any particular English statute. The case was postponed until March and Mitchell was told he would not be accepted as an attorney before that date. In January, among a number of contract cases, we find two

563, deed of land 562, attachment 558, estate of Robert Parr 554 (see 1 Md. Arch., Ass., 362), and of John Drueman 556. He was a merchant, and in January, 1657/8, there were many suits instituted concerning his estate.

[1] 10 Md. Arch., Prov. Ct., 552, 556, 561 (jury trial, which was unusual), 559.

[2] 10 Md. Arch., Prov. Ct., 556, 558.

[3] Basil Little's estate, 10 Md. Arch., Prov. Ct., 565.

[4] 10 Md. Arch., Prov. Ct., 568.

[5] 10 Md. Arch., Prov. Ct., 567. Earmark recorded and sale of heifer on p. 568. Estates coming before the court are those of John Cockerell, Richard Moore and Paul Simpson and —— Dammarell, January 26, 1657/8.

[6] J. H. Hollander, "Some Unpublished Material Relating to Dr. Jacob Lumbrozo, of Maryland," Publications of the American Jewish Historical Society, no. 1.

[7] See Bruce, "Economic and Social Life of Virginia in the Seventeenth Century," in The South in the Building of the Nation, I, 47. On January 26, 1657/8, Thomas Stone freed Solomon Barbarah from service due Capt. Wm. Stone, excepting the clause that he leave Stone one half his estate on his death, upon payment of four thousand pounds of tobacco.

depositions of interest, showing that one man agreed to take all the other's property and in return therefor maintain him for life "in meat, drink, apparel, and lodging." There is a rather touching series of depositions as to the nuncupative will of one Thomas White, who said that he would leave all his property to Margaret, William Marshall's maid, as they had "past their faith and troth together."

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THE DUTCH REPUBLIC AND THE AMERICAN REVOLUTION

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SERIES XXIX NO. 2

JOHNS HOPKINS UNIVERSITY STUDIES
IN
HISTORICAL AND POLITICAL SCIENCE

Under the Direction of the

Departments of History, Political Economy, and Political Science

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THE DUTCH REPUBLIC AND THE AMERICAN REVOLUTION

BY

FRIEDRICH EDLER, M.DIPL., PH.D.

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PREFACE.

Nearly all phases of the American Revolution have been carefully investigated. This is, to some extent, true also of the influence which European powers exercised upon its development. Little attention, however, has been paid to the important part which the United Provinces of the Netherlands played in the contest. Their aid to the Americans, though mostly clandestine, or indirect, and often based upon selfish principles, was nevertheless remarkably effective. Some Dutch historians, like Colenbrander and Blok, have at some length dealt with the relation of the United Provinces to the young American commonwealth. They did so, however, when writing the history of their own country, and consequently considered matters entirely from a Dutch point of view. In America no complete account of the assistance given by the Netherlands to the Revolution has been written. It seemed, therefore, desirable to add this missing link.

While the subject is presented in this essay chiefly from a diplomatic standpoint, matters of political economy, as the commercial and financial relations between the two republics, have not been neglected. Consideration is also given to military and naval affairs. A discussion, however, in how far the governmental system of the United States is derived from Dutch sources was deemed beyond the scope of this monograph and consequently omitted.[1]

The material needed for a thorough study of the subject was found in the United States. The archives of Europe have been—and are still being—searched by Americans for

[1] This question has been repeatedly treated. See: Douglas Campbell, The Puritan in England, Holland, and America; William Elliot Griffis, The Influence of the Netherlands in the Making of the English Commonwealth and the American Republic, and other writings of the same author on Holland; Henry William Elson, History of the United States of America, Chapter "Colonization—New York."

everything connected with the history of their country. Copies made abroad are easily accessible at public libraries in the United States. The archives of the Netherlands, England, France, and Prussia are thus literally brought to the door of the student in America: Sparks' collection of transcripts in the library of Harvard University, Bancroft's similar collection in the New York Public Library, Sparks' Dutch Papers in the library of Cornell University, and Stevens' Dutch Papers in the Library of Congress, together with the published and unpublished manuscripts in the possession of the Department of State at Washington, furnished most of the information for this monograph.

In conclusion I wish to express my sincere thanks to Professor J. Franklin Jameson, Professor William Ray Manning, and Dr. William Elliot Griffis for their valuable suggestions and kind assistance and to my wife who for many months helped me in the tedious work of arranging notes and preparing the manuscript.

THE DUTCH REPUBLIC AND THE AMERICAN REVOLUTION.

CHAPTER I.

The United Provinces at the Beginning of the American Revolution.

"All Europe is for us," wrote the American commissioners at Paris in 1777.[1] This had been true even in the earlier stages of the struggle between England and her American colonies, though perhaps less known. It was the outcome of the British policy of the last two decades, which had resulted in the isolation of England in Europe.[2] France had been compelled to accept most humiliating conditions from England in the treaty of Paris of 1763, ceding thereby Canada, the island of Cape Breton, and her African possessions on the river Senegal. In India property and territories were restored to their ancient limits, but the French were to send thither no more troops and consequently lost all influence. Naturally France was looking for an opportunity to retrieve these losses, to wipe out the disgrace, and to pay England back in her own coin. Her attitude was fully understood in England. "A dismemberment of the British empire," wrote a prominent Englishman of the time, "was an idea that now offered itself to her [the French] councils, in all the splendor of well-founded expectation. To deprive

[1] Benjamin Franklin and Silas Deane to the Committee of Secret Correspondence, April 9, 1777 (Wharton, The Revolutionary Diplomatic Correspondence of the United States, II, 287).

[2] "Every nation in Europe wishes to see Britain humbled, having all in their turns been offended by her insolence, which in prosperity, she is apt to discover on all occasions" (Benjamin Franklin and Silas Deane to the Committee of Secret Correspondence, March 12, 1777, in Wharton, II, 289).

an ancient enemy of his hereditary possessions, to strip a victorious rival of his most valuable conquests, was too brilliant a temptation for ambition and inveteracy to resist."[1] It cannot be surprising, then, that the efforts of the Thirteen Colonies to gain independence from their mother country had been watched with interest and sympathy by the French government from the beginning.

Another European state which had been greatly offended by the treaty of Paris in 1763 was Prussia, now at the height of its prosperity and power. Frederick the Great concluded, in 1756, the Convention of Westminster with England, and the latter was his only ally during the greater part of the Seven Years' War; but when Bute replaced Pitt in the English cabinet, British policy changed. All the provisions of the Convention were broken successively by England. The subsidies to Frederick were discontinued, and a separate peace was concluded with France (that of Paris in 1763) without even guaranteeing the Prussian dominions as had been stipulated by the Convention.[2] The consequence was that Frederick conceived a strong hatred for England in general and Bute in particular, which he later transferred to Lord North. Though the Prussian king, from political reasons, abstained from taking part openly with the Americans against England, he strongly sympathized with them and assisted them indirectly in many ways. In later chapters will be shown his efforts to influence the Dutch Republic against her old ally, Great Britain.

Still a third power was anxious, if not to avenge offences committed by England, yet to recover former losses. Spain, at the end of the Spanish succession war, had ceded to England the island of Minorca and her stronghold Gibraltar, the key to the Mediterranean.[3] Everything tending to

[1] John Andrews, Two additional Letters to His Excellency the Count Welderen, 1781, p. 37.

[2] France had occupied the Rhenish provinces of Cleve, Geldern, and Moers. England, in 1763, left France at liberty to surrender them to Austria or return them to Prussia (Petersdorff, Friedrich der Grosse, 451).

[3] By the treaty of Utrecht in 1713.

weaken England was afterwards welcome to Spain, since Great Britain's embarrassment would open the prospect for gaining back those two important possessions. Hence, she joined the enemies of England during the Seven Years' War. Her efforts to get back Gibraltar and Minorca failed; and in the Peace of Paris of 1763 she was compelled to cede Florida to Great Britain, although the latter power returned to her Cuba and the Philippines, while France gave Louisiana by way of compensation for Florida. Spanish hostility to England continued.

The rest of Europe was more or less indifferent with regard to the gigantic struggle just begun by the American colonies against their mother country. There was only one power which at this period was allied with England by commercial and political treaties. The attitude of the United Provinces of the Netherlands at the beginning of the American Revolution was an important problem. While France, Prussia, and Spain were governed by the will of their kings only, the United Provinces formed a republic in which party spirit ruled.[1] There were two large political classes, the

[1] The form of government in the United Provinces was very complicated, and in order to make the proceedings there during the revolutionary period comprehensible, a short outline of their constitution is desirable.

The United Provinces consisted of the following seven provinces: Holland, Zealand, Utrecht, Guelderland, Overyssel, Groningen, and Friesland. These states differed greatly in size, situation, and general tendencies, some being maritime, others inland provinces; some Protestant, others Catholic; some democratic like Friesland, others aristocratic like Holland (Griffis, Brave Little Holland, 3). Having formed their confederation at Utrecht in 1579, they had been united for almost two hundred years.

The president or stadtholder (since 1751 William V of Orange) stood nominally at the head of the government and held the offices of captain-general and admiral-general, in which capacity he had the supreme command over all the military and naval forces of the Republic, but he could not declare war or conclude peace. As grand-admiral he presided over the admiralties—councils which not only had charge of the administration of the navy but also had the direction of the custom-house. Only a few offices could be filled by the states, the disposal of the rest belonging to the stadtholder. This was a powerful means for putting the magistrates, especially those of the cities, under obligations to him and for attaching to his person such men as were looking for positions. The stadtholder was the first member of the Council of State and was privileged to

partisans of the stadtholder or English party and the anti-stadtholder or Anti-Orange party, also called the French party or Patriots.[1] These two groups were contending with

be present at the sessions and take part in the deliberations of the States General at his discretion, and also to make propositions to them. In several provinces, as Holland, Guelderland, Utrecht, and Zealand, he was president of the body of nobles. William V was, by a resolution of the States General in 1749, made also governor-general and supreme director of the companies of the East and West Indies, and possessed as such considerable power, being represented in their chambers and appointing their directors.

The main part of the sovereignty of the Dutch Republic was, however, vested in a senate of sovereign states or States General, in which each state or province, large or small, carried one vote (Griffis, Brave Little Holland, 2). The States General declared war and made peace, and their resolutions were decisive for the Republic. They appointed ambassadors and ministers to foreign courts, also instructing them and receiving their reports, which as a rule were directed to the griffier, that is to say, secretary of the States General. Diplomatic officials reported also to the stadtholder. All treaties, alliances, and conventions were negotiated and ratified in the name of the States General, after having been communicated to and ratified by the assemblies of the several provinces, since the deputies had to submit the subjects under consideration to their provinces before voting on them in the States General. It was, however, often not clear in what cases either a majority or absolute unanimity was necessary. The foreign ambassadors and ministers at the Hague were accredited to the States General. A few were also accredited to the stadtholder. The presidency of the States General changed weekly, the deputies of the provinces occupying this office in rotation (Wharton, IV, 88 ff.; Fitzmaurice, Life of William, Earl of Shelburne, 113). The assemblies of the separate states or provinces were composed of the nobles and of the deputies of the cities within the provincial boundaries.

The cities formed almost independent republics within the state. At the head of each were placed as chief executives the burgomasters, who belonged also to the great council consisting of the burgomasters and the councilors. The regencies, composed of the burgomasters, councilors, and schepens (judges), appointed the deputies to the provincial assemblies, the large cities sending as such two burgomasters, two schepens or two councilors, and one pensionary. The minister, or secretary, of a city was called pensionary; he stood under the authority of the burgomasters (Wharton, V, 99).

The prime minister or secretary of the States of Holland, who was practically also the foreign minister of the Republic, had the official title of Grand Pensionary and was a very influential man, as the province of Holland could be considered half the nation. In fact, his power was greater than that of the stadtholder. The resolutions of the assembly of Holland were more or less decisive for the other provinces (Wharton, V, 686, 687; Fitzmaurice, Shelburne, 113).

[1] Schlözer, Ludwig Ernst, Herzog zu Braunschweig und Lüneburg, 76–82.

each other bitterly, but being at this juncture about equally divided, neither obtained absolute supremacy.

At the head of the Orange party was the stadtholder, William V. Since his mother, Princess Anne of England, had always remained more attached to her native country than to the United Provinces, it was natural that her son too should have a personal affection for that country. The partisans of France in the Netherlands having strong republican tendencies, he saw in England the power which alone could fortify his position, and his attachment to Great Britain was therefore based rather on selfish motives than on patriotic considerations. His wife was Wilhelmine, niece of King Frederick II of Prussia, and she shared, to some degree, her uncle's inclination toward France. Since William V was irresolute[1] and of a weak character, though good natured, there is no doubt that Wilhelmine would have succeeded in causing her husband to seek closer connections with the court of France. Her influence was, however, counterbalanced by that of Duke Louis Ernest of Brunswick, the prince's former tutor and constant adviser, who was an ardent English partisan. The duke is said to have been endowed with extraordinary intelligence, with which, however, he combined an ambitious and intriguing character. He could never during his long residence in the United Provinces accommodate himself to the spirit of the Dutch,[2] and the consequence was that, forsaken by the Orange party and violently attacked by the Patriots, he was finally compelled to leave the Republic. In the period under consideration he had, however, still great influence upon the affairs of the country. Subsequent research[3] has exonerated him from the serious charges made against him, and it seemed that he served as a kind of a scapegoat for the political sins of both parties. He was principally accused of having kept the young prince in ignorance of the affairs

[1] Wharton, I, 449.
[2] Davies, History of Holland and the Dutch Nation, III, 440.
[3] Schlözer, Braunschweig; Nijhoff, De Hertog van Brunswijk. Both books were written for the purpose of defending the duke.

of the Republic, and of having arranged while his tutor a secret agreement (Acte van Consulentschap) with William, according to which the latter was bound to ask the duke's advice in all affairs of importance. The Prince of Orange himself confessed once to Maillebois that his military instruction had been such as to make him a corporal, and he might as well have added that in civil matters too he was scarcely able to hold a subaltern's position,[1] but, according to what has become known of the prince's capacities, this does not speak against Duke Louis. As to the Acte van Consulentschap, Brunswick, aware of the young stadtholder's lack of intelligence, firmness, and energy, thought such a measure necessary for the welfare of the country. His conduct can therefore not be attributed wholly to ambitious aims.

Of the provinces, some like Zealand and Guelderland, where the prince had large possessions, were almost wholly for the English cause, while others, especially the province of Holland, and the large towns (Amsterdam at their head) inclined toward France and the American colonies. The Patriots counted in their number the rich merchants and craftsmen of the country, and also many of the laboring classes, most of whom adhered to the Orangists. A religious sect, the Mennonites, also belonged to this party.[2] The aristocrats, who had much influence at the court, were traditionally and as a consequence of their preference for the French manner of living and thinking members of the French party. While the English minister to the States General, Sir Joseph Yorke, was tempestuous and overbearing, the French envoy, Duc de la Vauguyon, won, by his courtesy and tact, the social circles of the aristocrats. French at that time was still the court language, and French literature was much read among the more refined classes of the people throughout Europe.[3]

[1] Colenbrander, De Patriottentijd, Hoofzakelijk naar buitenlandsche bescheiden, I, 78.
[2] Schlözer, Braunschweig, 76–82.
[3] Wharton, I, 449.

At the outbreak of war between England and her colonies the English partisans in the United Provinces sympathized, of course, with Great Britain; on the other hand, the French party, like France herself, with the colonies, though not yet openly. The Dutch population in general watched with interest the exertions of the Americans for liberty, as they saw in that struggle a certain analogy to their own defection from Spain, which originated, like the American Revolution, partly in the unwillingness of the dependent provinces or colonies to be taxed by their mother country.

For the Dutch foreign policy there was, at the beginning of the American Revolution, only one course, that of remaining neutral. The United Provinces were not in a state of effective defence, either on land or on sea. They were far less prepared for an offensive war, their navy not being strong enough to give the slightest prospect of success in a naval contest with England, nor their army sufficient in numbers, compared with the military forces of the surrounding countries, to assist England on the continent, in case the war should spread over Europe. There was another reason why the Republic should keep out of the war. The Dutch were the great carriers of the world, transmitting the products of Europe to all parts of the earth, and vice versa, and would remain such so long as they were neutrals; but from the instant they should become involved in the war, their ships would be liable to seizure by the other belligerents, and their commerce and navigation must decline accordingly. The attitude of the masses of the Dutch at the outbreak of the English-American war was, consequently, in general friendly to the cause of the rebelling colonies,[1] while the interests of the country as understood by those who were in any way connected with commerce and navigation—and that was the great majority of the population—did not allow armed assistance. Great Britain was too formidable a naval adversary for the small republic in her present defenceless condition to cope with, and the

[1] Davies, History of Holland, III, 445.

Dutch were fully aware of the fact that the destruction of their navy meant the ruin of their country. "Strictest neutrality" must therefore be their political motto. It will be seen in the course of this essay how great a service the Dutch rendered to the American cause by not taking an active part in the war until it was well nigh decided in favor of the American arms. The following chapter will show the first official efforts of the United Provinces to remain neutral.

CHAPTER II.

The Dutch as Neutrals.

Though the government of the United Provinces, at the beginning of the Anglo-American war, was neutral, with a tendency on the part of the stadtholder to oblige England whenever possible, it could not prevent agents of the American colonies as well as of France from carrying on secret negotiations on Dutch ground. Sir Joseph Yorke, the English ambassador at the Hague, reported, in April, 1776, confidentially to Lord Suffolk that a friend had shown him a letter of very suspicious contents, which had been intercepted at the post-office.[1] It was from Abbé Desnoyers, the French chargé d'affaires at the Hague, and directed to Count de Vergennes, the foreign minister in Paris, dated April 16. It revealed the fact that a certain person calling himself an Englishman and living in the United Provinces, but not at the Hague, was corresponding with Dr. Benjamin Franklin, then chairman of the committee of secret correspondence in Philadelphia. The com-

[1] Yorke to Suffolk, April 19, 1776 (Letters and extracts from the correspondence of Sir Joseph Yorke, in the library of Harvard University, Sparks MSS., LXXII).

The United Provinces followed the practice of other countries at that time of having the letters of foreign ministers clandestinely opened at the post-office and copied. A special official then deciphered them. This was not so very difficult, since being appointed for this particular purpose, he was apt to find the key to the ciphers. In this way the reports of the French as well as of the Prussian minister were copied at the Hague, and also those of the Prussian envoy at the court of St. James, who sent his letters to Berlin by way of the United Provinces. The reports of the English envoy could not be intercepted as he had them safely delivered on board the ships (at Hellevoetsluis) which carried them over to England. The copies circulated among the Grand Pensionary of the States of Holland, the register or griffier of the States General, and the Prince of Orange. Griffier Fagel, who was an ardent English partisan, communicated them to the English minister (Colenbrander, Patriottentijd, I, 118–119).

mittee had transmitted full powers to that person, adding instructions with data regarding the present state and disposition of the colonies. The American agent had called upon Desnoyers to propose, on behalf of the colonies, closer connections between the two powers. France might become the mediator of the quarrel, or open her ports to the colonies and be received in theirs. The French chargé submitted the matter to the French court, stating that the American agent was ready to confer with the French authorities.

In May, Sir Joseph Yorke was able to send a second confidential report on this subject to Lord Suffolk, enclosing another extract from a letter to Count de Vergennes from the Abbé Desnoyers, in which the latter gave an account of an interview with the American correspondent. Desnoyers had informed the agent that Louis XVI could not accept the propositions of Congress, but that the vessels of all nations, including those of England, were free to enter the French ports, and that no difference would be made between England and her colonies in that respect. Only the carrying of contraband goods and the enlistment of soldiers were prohibited. Sir Joseph expressed his surprise at this attitude of the French court and added that it would be a good lesson for His Majesty's deluded and rebellious subjects, but feared that it would only result in confirming Dr. Franklin in his determination to continue the struggle for independence.[1]

Later in the year Ambassador Yorke reported again to Lord Suffolk regarding these negotiations between the American colonies and France. The correspondent of the American committee had repeated his propositions to Desnoyers, and the latter had informed his court of the interview. From the contents of the chargé's letter it appeared that the attitude of the King of France had not changed and that the agent had received no further instructions from America.[2] A few days later, Yorke wrote

[1] Yorke to Suffolk, May 24, 1776 (Sparks MSS., LXXII; Colenbrander, Patriottentijd, I, 119).

[2] Yorke to Suffolk, August 2, 1776 (Sparks MSS., LXXII).

less cheerfully to Lord Suffolk concerning the conduct of France and also that of the Dutch Republic. He had been informed of an utterance of Desnoyers to the effect that the latter wished the troubles between England and her colonies to continue a little longer in order that Great Britain might be reduced to a state as weak as that of France. The United Provinces shared this hope, but from different motives, commercial advantage being their main reason.[1]

In the course of the year 1776 France had become more decided in her hostility toward England and in her sympathy for the colonies. It was henceforth essential for her to draw the Dutch Republic away from Great Britain, and to attach it more closely to herself for reasons which were partly of a commercial, but more of a strategical nature. In case of a war with England, if the Dutch Republic should be the latter's ally, France would have to close her ports to the Dutch ships. This action would deprive her of the very means of carrying on the hostilities effectively, since the United Provinces were the chief sources of French naval stores and provisions. At the same time she would have to engage her army either to defend her northern boundaries against the United Provinces or to invade the latter. Part of her navy would be required to hold the Dutch forces in check. It was thus of utmost importance for France to have the United Provinces at least neutral neighbors. On July 7, 1776, Count de Vergennes read a memorandum in the French council on the new situation, laying out a plan to be pursued by France in the controversy between England and her colonies. He recommended an effective French propaganda in the United Provinces to stir up the republican party, which France had neglected. He would also profit by the thirst for riches with which the Dutch were imbued individually by letting them enjoy a neutrality which would become a source of wealth for them.[2] To carry out this policy a new French ambassador was appointed for the

[1] Yorke to Suffolk, August 13, 1776 (Sparks MSS., LXXII).
[2] Doniol, Histoire de la Participation de la France à l'Etablissement des Etats-Unis d'Amérique, I, 528.

vacant post at the Hague, the Duc de la Vauguyon.[1] The choice was a very lucky one from the French standpoint. His talents for accomplishing the task set him were extraordinary. He succeeded in causing the authorities to follow his suggestions so that the Republic became, in the end, utterly dependent on France. Following his instructions, he aroused in commercial circles the greed for gain and among the regents the love of power, at the same time somewhat discrediting the stadtholder in order to isolate him and to paralyze his influence; but he took care to do this in an inconspicuous manner. The main field of his activity in the United Provinces was the province of Holland and especially the city of Amsterdam, with the regents of which he was soon in close connection. However, in the beginning, he avoided conferring with the leaders of the French party as he thought it dangerous to show his cards too quickly.[2] Even his personality was highly fitted for his mission, and won him many friends in the Republic. He is said to have differed much from the average Frenchman of his class at that time, being neither frivolous nor skeptical and not making any efforts to appear a witty man.[3] These qualities counted greatly in the eyes of the stern and plain Dutch natives. Furthermore his figure was more of the Dutch than of the French type.[4]

The English colonies in America declared their independence on July 4, 1776. This bold step was received with hearty applause in Europe. The news of the declaration arrived in the United Provinces toward the end of August, 1776, and caused there much rejoicing. Only the partisans of England were greatly depressed. Yorke declared that

[1] Paul François de Quelen, Duc de la Vauguyon, was appointed minister to the States General in December, 1776, being then a little over thirty years old. He was a favorite of Louis XVI, his father having been the latter's tutor (Colenbrander, Patriottentijd, I, 120–121).

[2] Nijhoff, Brunswijk, 156.

[3] Colenbrander, Patriottentijd, I, 121.

[4] In a letter to Lord Eden, dated December 24, 1776, Sir Joseph Yorke speaks of Vauguyon as being "of the right cut for this Embassy, being as *squab* as anything in Holland" (Colenbrander, Patriottentijd, I, 121, note).

he could not help thinking such a step would be advantageous to the English government, for the hot heads amongst the Americans, who had gone too far to hope for pardon, had probably carried this point in the Congress by main force, in the hope, by breaking down the bridge behind them, of drawing the others along with them into the mire. In this light, he said, it was looked upon by reasonable people in the United Provinces.[1]

While the English ambassador at the Hague and the partisans of Great Britain thus faintly tried to console themselves with the supposition that the Declaration of Independence had been forced upon the colonies by "hot heads," and was therefore not due to general conviction, the French chargé, Desnoyers,[2] sent a report to his government which is of special interest, since it dealt with public opinion in the Netherlands regarding the independence of America and the expectations which the Dutch connected with it. The Dutch flattered themselves that the independence of the English colonies would open to them a new source of commerce and wealth. The Dutch had always been very observant of the American contest, having once themselves possessed considerable portions of North America, where a large number of their nation still subsisted, preserving the customs and religion of the United Provinces. The Dutch at home would willingly aid their American kindred, who would as willingly reunite themselves with the mother country. The act of independence, he continued, was going to occupy greatly the minds of those among the Dutch who thought it possible to assist the Americans in making their revolution as successful as had been the Dutch revolution against Spain. Jealous of the commerce of other countries, the United Provinces, he thought, would not wish any nation to be ahead of them in the friendship of a new

[1] Yorke to Eden, August 23, 1776 (Sparks MSS., LXXII).

[2] The Duc de la Vauguyon arrived at the Hague in December, 1776. Desnoyers wrote to Vergennes on December 17, 1776, that he expected Vauguyon's arrival daily, and that his duty as chargé d'affaires would then be ended (Sparks MSS., LXXXII).

nation of such vast economic possibilities, and one which in the time of peace would multiply as the sand.[1]

The French were, however, still apprehensive that English influence might predominate in the United Provinces and that the neutrality of the Dutch would give way to an armed assistance of England. The French ambassador was suspicious as to the recent zeal of the Prince of Orange in naval matters, noticing also that the stadtholder revealed his sympathy for Great Britain more and more. He had heard, besides, of a marriage project between the Prince of Wales and the stadtholder's daughter. The prospect of such a union was said to have been opened to William V by his envoy at the court of St. James, Count van Welderen. The latter, then on leave at the Hague, had just been in conference with Sir Joseph Yorke.[2] At this conjuncture, the French government took into consideration a renewal of the treaty of commerce of 1739 with the Dutch Republic, but Count de Vergennes rejected this project because the treaty would give advantages, as before, only to the Dutch. On the other hand, it would not cause the ties existing between England and the United Provinces to cease. Furthermore he did not deem such a treaty necessary for attaching the United Provinces to France because it was well known to the Dutch that France desired their neutrality; and this was so advantageous to the Republic.[3] The ambassador, Vauguyon, was, however, instructed by Count de Vergennes to assure the friends of France in the United Provinces that Louis XVI was taking a special interest in the prosperity of the Republic and that the Patriots would always find sufficient support in France to counterbalance the influence and the aims of England.[4]

In the meantime the colonies in America had not remained inactive regarding the appointment of representatives in

[1] Desnoyers to Vergennes, September 10, 1776 (Sparks MSS., LXXXIII).
[2] Vauguyon to Vergennes, August 1, 1777 (Sparks MSS., LXXXII).
[3] Vergennes to Vauguyon, August 3, 1777 (ibid.).
[4] Same to same, August 7, 1777 (ibid.).

Europe. Soon after the committee of secret correspondence had been formed in 1775, with Benjamin Franklin as its chairman, a resolution was passed appointing C. W. F. Dumas at the Hague[1] its correspondent in the United Provinces. Silas Deane[2] of Connecticut was elected by Congress as American business agent in Paris and Franklin,[3] then in his seventieth year, as commissioner to France. Arthur Lee, Franklin's successor in England after the latter's departure in the spring of 1775, had in the same year been appointed secret agent of the committee of secret correspondence in London, and was elected in October, 1776, commissioner of Congress to the court of France as a substitute for Mr. Jefferson, who had not accepted that office.[4]

Dumas owed his appointment to Dr. Franklin, with whom he had become acquainted during a stay of the latter in the United Provinces at the beginning of the American Revolution. Franklin, noticing Dumas' strong love of liberty and his devotion to the American cause, did not hesitate to propose him as secret correspondent to Congress. A prominent Dutchman (van der Capellen) wrote to Livingston in 1779 that Dumas was devoted with heart and soul to the cause of the Thirteen States, to which he had rendered important services.[5] Francis Wharton says of Dumas: "It will be seen by M. Dumas' correspondence that his services were unremitting, assiduous, and important, and performed with a singular devotedness to the interests of the United States, and with a warm and undeviating attachment to the rights and liberties for which they were con-

[1] "Charles William Frederick Dumas . . . was a native of Switzerland, but he passed a large portion of his life in Holland, chiefly employed as a man of letters. He was a man of deep learning, versed in the ancient classics, and skilled in several modern languages, a warm friend of liberty, and an early defender of the American cause. About the year 1770, or a little later, he published an edition of Vattel, with a long preface and notes, which were marked with his liberal sentiments" (Wharton, I, 603).

[2] In February, 1776 (ibid., I, 559).

[3] On September 27, 1776 (ibid., I, 473).

[4] Ibid., I, 517.

[5] Beaufort, Brieven van en aan Joan Derck van der Capellen van de Poll, 114.

tending."[1] When Arthur Lee was elected secret agent in London, Franklin referred him (on December 12, 1775) to Dumas, to whom the committee of secret correspondence had sent detailed information regarding the American affairs. Dumas, Franklin wrote, would also transmit Lee's letters to the committee via the Dutch island St. Eustatia, in case Lee should not be able to send them more directly.[2] When Deane left America to enter upon his duties as the commercial agent of Congress in France, Franklin recommended him also to Dumas, instructing Deane to inform the latter of everything of interest that had happened in America.[3] Soon after Deane's arrival at Paris a correspondence between the two began, and Deane expressed to Dumas his desire of visiting the United Provinces as a private gentleman. In a letter, dated August 18, 1776, Deane gave this interesting account of the American policy regarding the United Provinces to Dumas:—

"It is the policy of the United Provinces of Holland to be neuter to every attention. The United Colonies only wish them to keep steady to their only true system of policy in the present case; and give me leave to say that a reflection on their former struggles must show them in what point of light the Americans are to be considered. The United Colonies ask no aid or alliances. Let Britain court every, even the most petty and mercenary, power in Europe, the United Colonies only ask for what nature surely entitles all men to, a free and uninterrupted commerce and exchange of the superfluities of one country for those of another, and the first power in Europe which takes advantage of the present favorable occasion must exceed every other in commerce."[4]

Though Dumas used every means for keeping his activity for the American Congress a secret, it was not long before Sir Joseph Yorke discovered it. He informed Lord Suffolk confidentially that one Macintosh was certainly in correspondence with America, but that Dumas must be regarded, properly speaking, as the agent of Congress.[5] Lord Suffolk, however, seemed to have additional intelligence of American agitation in the United Provinces, for he wrote to Sir Joseph

[1] Wharton, I, 603.
[2] Wharton, II, 63; R. H. Lee, Life of Arthur Lee, I, 53.
[3] Wharton, II, 82.
[4] Wharton, II, 128.
[5] Yorke to Suffolk, September 17, 1776 (Sparks MSS., LXXII).

soon afterwards that he had reason to believe Alexander Foster from Philadelphia to be the American agent at Amsterdam and William Hodge at Rotterdam.[1] With all these French and American influences in the United Provinces known to the English ambassador it is surprising that he could say in a letter to W. Eden that the rebels were losing friends every day, which was the fate of those going down.[2] When Yorke learned of Silas Deane's intention to visit the United Provinces, he warned the government at the Hague that neither the treaties existing between England and the Republic nor the friendly relations entertained by them could allow such rebel visitors in the United Provinces.[3]

While the agents of three countries were thus busy in the United Provinces trying to move the Dutch according to the special interests of their respective governments, the Republic pursued officially the policy of neutrality. In February, 1775, Sir Joseph Yorke had presented a memorandum to the States General, in which he announced that the English colonies in America had risen in rebellion against his master, who would find means to bring his subjects back to their duty. For this purpose the king thought it necessary that the rebels should not receive, under the pretext of commerce, anything that might nourish the insurrection. Yorke asked then in the name of George III that the States General, without delay, take such measures as they deemed proper for preventing the inhabitants of the United Provinces from exporting arms and munitions of war to the West Indies beyond what was bona fide necessary for the use of the Dutch colonies. He observed that the temporary inconveniences caused by this prohibition would be small; it was, however, the only means for preserving harmony between the two countries and for avoiding disagreements, which must result from a different conduct.[4]

[1] Suffolk to Yorke, November 29, 1776 (Sparks MSS., LXXII).
[2] Yorke to Eden, December 24, 1776 (ibid.).
[3] Yorke to Suffolk, July 15, 1777 (ibid.).
[4] Yorke's memorandum, February 27, 1775 (Sparks MSS., CIII; Bancroft MSS., America, Holland, and England).

The States General, thereupon, passed a resolution in March, in which they expressed their desire of maintaining the liberty only of the bona fide commerce and navigation, and of checking any abuses which might possibly be made of that freedom to the disadvantage of the English crown. They prohibited, for a period of six months, the export of arms, gunpowder, and other munitions of war in English vessels or ships carrying the English flag.[1] Ships of other nations, including those belonging to subjects of the States General, were forbidden to export such goods during the same period, unless with express permission of the competent admiralty. At the same time the admiralties were to be instructed to permit such goods to be exported only when the sender should declare under oath that he had no knowledge, directly or indirectly, of the arms or ammunition being sent to places situated in the dominions of Great Britain in America. The Dutch colonies in the West Indies were to receive the same orders concerning the export of contraband from there. The States General declared that this was the utmost that they could do without violating the freedom of commerce and navigation; they trusted therefore that this resolution would meet with the approbation of the king.

The States General then issued detailed orders for the Republic. All export of munitions of war, gunpowder, cannon, guns and balls, in ships domiciled in the English dominions was forbidden provisionally for a period of six months under fine not only of the confiscation of the arms and ammunition found in those vessels, but in addition of one thousand guilders to be paid by the skipper, his vessel being confiscated in case of non-payment. For the loading of such goods in other vessels, including Dutch, permission by the competent admiralty was prescribed. For contravention of the latter regulation the same fine as before was fixed. The admiralties were instructed according to the

[1] This was, of course, aimed chiefly at the Americans, who were at this period still considered English subjects. Not yet possessing a flag of their own, they were using the same colors as the mother country.

resolution. The West Indies Company, the Society of Surinam, and the Administration of the Berbice were asked to issue the same orders for the colonies under their management, the fine to be fixed according to the circumstances of the colonies and the permission for Dutch ships and those of other nationality to be given by the competent governments or authorities of the colonies.[1]

George III, through his ambassador at the Hague, declared his satisfaction with the neutrality of the United Provinces as expressed by the resolution of the States General of March 20, 1775. As the term of the prohibition of the export of contraband would expire in the month of September, 1775, Yorke presented, in August, another memorandum to the States General asking for a prolongation of the term,[2] which was granted for one year by a resolution of the States General of August 18.[3] Similar resolutions, each for one year, were passed by them, on October 10, 1776—after Yorke had made strong representations that the previous measures had been absolutely ineffective[4] —and again on November 3, 1777.[5]

The French chargé d'affaires, Abbé Desnoyers, reported these declarations of neutrality to Count de Vergennes on September 24, 1776. He had heard, he wrote, of a memorial of the English ambassador requesting the renewal of the prohibition of the export of contraband to the revolting colonies. After stating the previous decrees for that purpose he continued that the language held by the Dutch in these resolutions seemed rather curious, when compared with their subsequent leniency as to facts. It was almost proved, he said, that they had contributed to raising the confidence of the colonies in declaring their independence, while

[1] Resolution of the States General, March 20, 1775 (Bancroft MSS.; Groot Placaatboek, IX, 107).
[2] Yorke's memoranda of April 7, 1775, and August 8, 1775 (Bancroft MSS.; Sparks MSS., CIII).
[3] Resolution of the States General, August 18, 1775 (Sparks MSS., CIII).
[4] Yorke, October 1, 1776 (Bancroft MSS.; Sparks MSS., CIII). Below, p. 41.
[5] Groot Placaatboek, IX, 107.

at the same time they had furnished the English ministry with packets and store ships. The Republic had quickly seized the opportunity for this double game at sea and found it profitable, both financially and politically. But he thought the United Provinces would sooner or later be compelled to take some part in the controversy. If the court of Vienna should then be inclined to encroach upon the Dutch boundaries or commerce, the embarrassment of the United Provinces would become very great. The adjustment of England with her colonies, Desnoyers said, could consequently not be very agreeable intelligence for the majority of the Dutch. This adjustment, after the American Declaration of Independence, appeared to many people impossible, but, he said, might perhaps be the more easily effected on that very account.[1]

It is not quite clear from this letter which way Desnoyers wished the Dutch to turn. Apparently he was not aware of the policy of the French government decided upon in the course of the year 1776, according to which the neutrality of the United Provinces was greatly desired by France, but at the same time a secret or indirect support of the American colonies by the Dutch could only be agreeable to her.

While these declarations of neutrality were in favor of the English, another decision of the Dutch government in a neutral direction was certainly very pleasing to the colonies, that is, the quasi refusal to send the Scotch brigade to England.[2]

In November, 1775, William V informed the States General of George III's desire transmitted to the stadtholder in the preceding October of borrowing the brigade[3] during

[1] Desnoyers to Vergennes, September 24, 1776 (Sparks MSS., LXXXIII).

[2] Pfister, Die amerikanische Revolution, I, 298.

[3] One of the main reasons why the Scotch regiments were left in the United Provinces and why their recruiting in Scotland was formerly not only permitted but facilitated was probably that they formed a small army at the disposal of the English kings, especially the Stuarts, for emergency use whenever Parliament would not grant the raising of one (Colenbrander, Patriottentijd, I, 115).

the rebellion of the colonies in America. Since England was making war against her own colonies and outside of Europe, the treaty with the United Provinces of 1678 was not available, and she could not ask for the six thousand auxiliaries stipulated by that treaty.[1] Neither could the lending of the Scotch brigade be demanded on account of the treaty but merely on the ground of the friendly relations existing between the two governments. According to tradition, it is true, the brigade was at England's disposal whenever she wanted it, but since Great Britain had forbidden the recruiting of the brigade in Scotland the obligation of the United Provinces to adhere to the tradition on her part had ceased. It seems that England foresaw the difficulties created by her request and that, according to a note in the diary of the Duke of Brunswick, the whole transaction was only a political trick of Lord North, who thought he might be enabled by a refusal of the Dutch to persuade Parliament of the necessity of hiring foreign troops.[2]

George III, in return for the loan of the brigade, offered to replace the latter by an equal number of Hanoverian troops, or to pay the expenses for levying the same number of national Dutch troops. The States General were furthermore to have the choice of either recalling the brigade or leaving it to Great Britain at the conclusion of the war. In the case of the recall of the brigade, George III would again grant permission for recruiting in Scotland.[3] The States General referred the proposition to the provinces, four of which (Guelderland, Friesland, Overyssel and Groningen) immediately gave their consent to the transfer of

[1] Nijhoff says (Brunswijk, 145) that William V was immediately willing, "om die complaisance aan den koning van Engeland te bewijzen, als of het afstaan van circa 6000 man troepen als een zaak van beleefdheid kon worden aangemerkt." As only the lending of the brigade, counting scarcely more than a thousand men, was and could be in question, Nijhoff seems to be mistaken here. See also Colenbrander, Patriottentijd, I, 116, note 1.

[2] Nijhoff, Brunswijk, 148, footnote.

[3] Ferguson, Papers illustrating the History of the Scots Brigade in the Service of the United Netherlands, II, 396.

the Scotch brigade. The attitude of Zealand and Utrecht has not become known. Holland, though Yorke had asked for an answer within a month,[1] came to a resolution only in February, 1776, accepting then England's offer, under conditions which made the acceptance equal to a refusal. She required that permission to recruit in Scotland must be restored after the brigade should return to the United Provinces; that England should bear all the expenses of transport from the Republic and back, as well as the pay of the brigade during its absence from the Netherlands and the cost of replacing it by foreign troops; and finally that the brigade should in no case be employed either wholly or partly outside Great Britain's possessions in Europe.[2]

These conditions were accepted by the States General on April 5, 1776.[3] The last condition especially was a great disappointment to George III, since he wanted to employ the brigade, according to a statement by Yorke, against the American colonies.[4] A few days later, on April 8, the Prince of Orange, who had corresponded privately and directly with George III, made known that the King of England had sent him an autograph letter thanking him for his good offices and announcing that he would accept the conditions which the prince had communicated to him as the opinion of the States General, in case he should be in a position to renew his request.[5]

Though the United Provinces had given in these transactions a strong proof of their neutrality, what was more important was the fact, revealed in the course of the debates, that the relations between England and the United Prov-

[1] Colenbrander, Patriottentijd, I, 116.

[2] Ferguson, Scots Brigade, II, 397; Colenbrander, Patriottentijd, I, 116.

[3] Secret Resolution of the States General, 1776 (Sparks MSS., CIII).

[4] Brunswick to William V, September 24, 1775 (Nijhoff, Brunswijk, 144, footnote).

[5] Mrs. Fairchild states (Francis Adriaan van der Kemp, 38) that when the brigade was at last lent to the king, it was upon the condition that it should not be used outside of Europe. This seems to be a mistake, as the brigade, in fact, was never lent to George III.

inces had become rather cool while the sympathy for the American colonies had greatly increased. Amsterdam had even considered the proposition of selling the Scotch brigade to England as if aiming at the severance of all relations with Great Britain.[1] The Duke of Brunswick was indignant at the English request and, though an English partisan himself, was violently opposed to granting it. In his opinion, England, knowing the unwillingness of the States General to increase the Dutch army, ought not to have asked for a measure which would have diminished the number and the strength of the Dutch military forces and therefore weakened the resistance of the Republic to France. He had no faith in either raising the number of Dutch national troops or hiring foreigners. The former would not be granted by the States General. On the other hand, it would be difficult to subject all those foreign troops to the military and civil laws of the Republic, and they would therefore endanger the safety of the state.[2]

Most remarkable were the proceedings in the States of Overyssel, owing to the opposition of van der Capellen van de Poll,[3] who was destined to become the great leader of the Dutch Patriots and the man to whom the United States

[1] Ferguson, Scots Brigade, II, 397.

[2] Brunswick to Prince of Orange, January 30, 1776 (Nijhoff, Brunswijk, 292).

[3] Joan Derk van der Capellen van de (or "tot den") Poll was born on November 2, 1741, as the eldest son of Frederich J. van der Capellen, major of infantry. He was anxious to enter the Ridderschap and the Upper House of the States of Zutphen, province of Guelderland, but was not admitted, failing to fulfill the requirements. Van der Capellen then turned to the province of Overyssel. His birth and his possession of a knightly estate, "that of Bredenhorst" (later exchanged for that of Poll), qualified him there, and with the support of the stadtholder he was admitted as regent into the Ridderschap of Overyssel on October 22, 1772. By the study of English philosophy and statecraft he was imbued with liberal principles and ideas, which brought about his determination to establish an open and declared opposition; this he thought of the utmost importance for the maintenance of a constitution in which, like the Dutch, a great dose of monarchy entered. Carrying out this plan, he drew upon him the hatred of the English faction and the indignation of the stadtholder, who recognized too late that he had assisted an opponent in becoming a regent (Fairchild, van der Kemp, 30–35; Beaufort, Brieven van der Capellen, 87).

owe gratitude for his courageous support of the cause of the Revolution at a time when no one dared to plead openly in the United Provinces for American independence and when the success of the rebellion was very problematic.[1] On December 16, 1775, he violently opposed in a now famous speech before the States of Overyssel the lending of the Scotch brigade to Great Britain. He declared, whatever might be the fate of the American colonies, he would always regard it as a glory and an honor to have openly protected, in his public character, their cause which he regarded as that of all the human kind. It was absolutely necessary for the Republic, he said, to keep strictest neutrality during the controversy of Great Britain with her colonies, since it was the duty of the United Provinces to restore their own commerce and agriculture which had greatly declined. Therefore if the Republic were going to give assistance to England, the same must be given also to the Americans. Besides the conduct of England was not such as to cause the United Provinces to break with a peaceful neighbor, France, who was the natural friend of the Republic. Hideous as this unnatural war between brothers was, in which, according to the newspapers, even barbarians declined to interfere, it would be more hideous if this should be done by a people who once themselves had been slaves and had borne the name of rebels, but most hideous of all must it be regarded if assistance should be given against the Americans, who, a brave nation, deserved the respect of all the world, and who defended unfalteringly the rights which as men they had received from God Almighty and not from England.[2]

Van der Capellen was bold enough to have this speech printed and distributed, causing thereby a great sensation. The States of Overyssel, on March 14, 1777, removed his "Avis" from their records, declaring that it was not conceived in decent terms, and soon afterwards arranged his

[1] Beaufort, Brieven van der Capellen, 61, 63.
[2] Vaterlandsche Historie (Wagenaar's Vaterlandsche Historie, continued), XXV, 55–57.

dismissal as a regent. In America van der Capellen won many friends and admirers by his brave defence of the American cause, as is proved by the letters which he re- that of the President and members of Congress;[1] and from Governor Trumbull of Connecticut in his own name and that of the President and members of Congress;[2] and from Franklin and others. Van der Capellen's courage did not fail to impress the majority of the Dutch; his attachment to America and his conduct in the affair of the Scotch brigade made him dear to his fellow-citizens.[2]

Another important act of neutrality of the Dutch was the keeping open of their ports to American vessels. Ambassador Yorke had frequent conferences with the heads of the Republic on the subject of closing the Dutch ports in all parts of the world to vessels of the American colonies, but the United Provinces declined.[3]

The passage of foreign troops in British pay through the United Provinces for embarkation to America was, however, not denied. Sir Joseph Yorke presented a memorandum to the States General on February 23, 1776, in which he stated that England had concluded a treaty with the Prince of Hesse-Cassel by which the latter was obliged to furnish a regiment of infantry for English service. This regiment was to be sent down the rivers, Main and Rhine, to the Dutch frontier, and permission was asked to let it pass through the Dutch territory without molestation. The regiment would observe the most exact discipline, and everything for its passage would be paid in cash. In a similar English memorandum of February 17, 1777, free passage was requested again for Hessian troops with their arms and baggage from the Dutch frontier to Dort or Willemstadt, and for about thirteen hundred men of Anspach with their field artillery.[4]

[1] Fairchild, van der Kemp, 36–39.
[2] Beaufort, Brieven van der Capellen, 59.
[3] Desnoyers to Vergennes, October 11 and 22, 1776 (Sparks MSS., LXXXII).
[4] Bancroft MSS., America, Holland, and England.

While the United Provinces indirectly assisted England by allowing this passage of troops, they, in a similar affair, acted in favor of the Americans, restoring, thereby, their neutrality. The Republic employed in her service two regiments of the Prince of Waldeck, which George III was very anxious to obtain against the American colonies. Sir Joseph Yorke, therefore, in concert with the griffier of the States General, Fagel, and the chiefs of the English party, had many interviews with principal members of the Republic on this subject. The Prince of Waldeck, of course, as owner of the regiments, was asked for this cession too, but replied that he would first communicate the proposition to the States General. He would accept it only if the United Provinces should not increase the compensation for the regiments.[1] Yorke thought that the States General would never grant such an increase, and that the regiments would consequently pass over into the English service. He was, however, mistaken. The States General voted in favor of the retention of the regiments on the conditions of the Prince of Waldeck.[2]

As an act of neutrality must also be considered the renewal by the States General of the placaat of 1756. According to this resolution pirates appearing in Dutch waters, or privateers entering any of the Dutch ports without showing colors and not being able to produce legal commissions, were liable to be seized and prosecuted. All the Dutch admiralties were immediately informed accordingly and instructed to put the law in force at once.[3] Though the

[1] "Augmenter la capitulation." It is uncertain whether this means "increase the contract money," or "renew the contract" by which the regiments had passed into the service of the United Provinces. Probably the first, since Yorke—apparently in view of the Dutch parsimony—did not expect the States General to grant it. The renewal of the capitulation could scarcely have been considered extraordinary by him.

[2] Vauguyon to Vergennes, July, 1777 (Sparks MSS., LXXXII).

[3] Yorke to Suffolk, May 6, 1777 (Sparks MSS., LXXII).

The interesting episode of a man-of-war constructed by the Dutch for the United States should be mentioned. The American commissioners in Paris succeeded in having a frigate built for the United States at Amsterdam in 1777. She was a very large vessel,

Dutch government thus gave in many ways proof of its earnest desire to be strictly neutral, the court of St. James was by no means satisfied with the conduct of the Dutch, as will be seen in the next chapter.

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carrying thirty 24-pounders on one deck, and almost equalled a ship of the line in appearance. Unfortunately difficulties arose about the equipping and manning of the vessel in the neutral Dutch Republic. The commissioners were also lacking funds. They resolved therefore to sell the frigate to the King of France (Franklin, Deane, and Lee to the Committee of Foreign Affairs, November 30, 1777, in Wharton, II, 433). Louis XVI, on his part, ceded the "Indian," as the frigate was called, to the Chevalier Luxembourg. In 1780 Alexander Gillon, a merchant from South Carolina, rented the vessel for his state and renamed her "South Carolina." He sailed from Amsterdam in July, 1780, but did not arrive at Philadelphia until May 28, 1782. The "South Carolina" was put to sea again in December of the same year, but was chased and captured by an English squadron soon after she had left the Capes of Delaware. Luxembourg, as had been stipulated by contract, demanded 300,000 livres for this loss. His claim was settled only on December 21, 1814, when the state of South Carolina made a final payment of $28,894 to the heirs of the Chevalier Luxembourg (C. O. Paullin, The Navy of the American Revolution, 264, 304, 436–440).

CHAPTER III.

English Complaints.

Though George III, in 1775, had expressed his satisfaction with the Dutch proclamation prohibiting contraband trade with North America,[1] the sentiments of the English authorities soon changed. Sir Joseph Yorke wrote to Lord Suffolk in the following year that he was glad to receive from Sir William Gordon an ordinance, in terms very friendly to his Majesty, just published by the government of Brussels prohibiting the exportation of arms and ammunition, which he would take care to publish in the United Provinces as worthy of imitation. "I stated," the ambassador said in another letter to his government, "the strong proof of friendship lately given by the King of Portugal, and proved more or less, that every Power in Europe had gone further than the Republic."[2] Still it was apparently not so much the wording of the Dutch declaration that displeased Great Britain as it was the failure to enforce it.[3] According to the law of nations it was then, just as to-day, considered a breach of neutrality, and formed a casus belli, for a state to furnish arms and other contraband goods to belligerents. If, however, private citizens engaged in such commerce, they did not involve their country in any breach of neutrality but ran the risk of losing their goods.[4] In the case of the subjects of the States General, it did not make any difference that the latter had issued special regu-

[1] Above, p. 27.

[2] Yorke to Suffolk, April 30, 1776; same to same, August 6, 1776 (Sparks MSS., LXXII).

[3] The admiralties were apparently not very strict in the observance of the regulations (Colenbrander, Patriottentijd, I, 115; Jameson, "St. Eustatius in the American Revolution," American Historical Review, July, 1903, p. 687).

[4] Wharton, I, 453.

lations. Dutch citizens violating the contraband laws of their country were subject to the punishment provided for such transgressions, yet the status of the Dutch government with reference to Great Britain was not changed thereby. The English were, therefore, as far as the law of nations was concerned, not justified in making the contraband trade of Dutch merchants the subject of violent reproaches to the Republic.

There were many ways in which the Dutch merchants were able to evade the regulations of the States General. As it was forbidden to export contraband to the American colonies the Dutch carried their goods first to some French port where the goods passed nominally into the possession of the French. This manipulation was even sometimes performed in mid ocean, American and Dutch vessels exchanging their cargoes. In 1777 the Grand Pensionary of Holland, at the instigation of Sir Joseph Yorke, had these manoeuvres on the high sea investigated. The ambassador, reporting the result to his government, said that the fact of illicit trade seemed clearly proved by this inquiry, however with the difference that Frenchmen assisted in the collusion to cover the Dutch, and that papers were given to mask the transaction and prevent the law from taking effect.[1] A more frequent means of making the ordinances ineffective was to send the contraband goods to the Dutch West Indies, especially the island of St. Eustatia, whence American vessels carried them to the colonies. It seems that in the beginning of the war only comparatively few American merchant vessels ventured as far as the coast of the Dutch Republic. They usually unloaded their cargoes at French or Spanish ports where Dutch vessels received the American goods in exchange for contraband brought from the United Provinces. Sir Joseph Yorke observed ironically that the Dutch merchants ought to become anti-American, not out of good will to England,

[1] Yorke to Suffolk, November 25 and 28, 1777 (Sparks MSS., LXXII).

but from jealousy in seeing the American trade, owing to the greater facility of the voyage, pour into French and Spanish ports instead of theirs.[1]

Another trade in which the Dutch merchants were engaged might have been considered unlawful, that is, the commercial intermediacy between England and her revolting colonies. To such violations, however, Great Britain closed her eyes. The English ambassador wrote to Lord Suffolk in 1776 that the English manufacturers conveyed their goods to America through the United Provinces. He added that he did not expect to see a stop put to it and that he was not insisting upon the prohibition of any other branch of contraband than warlike stores.[2] No wonder then that Dutch commerce and navigation reached a height during the American Revolution which had never been attained before. England was losing accordingly. The high marine insurance, sometimes as high as 35 per cent., for English goods destined for the West Indies was almost prohibitive. Many of the Dutch who had never thought of engaging in the commerce with distant countries now took their share in the American trade. It was as if a gold-mine had been opened for Dutch commerce.[3] A regular trade intercourse between America and the United Provinces, especially Amsterdam, had been established, according to the French chargé d'affaires, Abbé Desnoyers, as early as 1776. He informed the foreign minister in France that the "independents of the English colonies" seemed to have a very regular intercourse with Amsterdam, that some of them were actually there and purchased great quanti-

[1] Yorke to Suffolk, December 24, 1776, and Yorke to Eden, December 27, 1776 (Sparks MSS., LXXII).

[2] Yorke to Suffolk, December 3, 1776 (Sparks MSS., LXXII). The French, too, replaced English navigation to a great extent at this period (Arthur Lee to the Committee of Foreign Affairs, September 9, 1777, in Wharton, II, 391–392).

[3] On the flourishing of Dutch commerce and navigation see: Kampen, Verkorte Geschiedenis der Nederlanden, II, 290; Dumas to the American Commissioners, June 19, 23, 26, 1778 (Lee's MSS. in the library of Harvard University, IV, No. 156); Vaterlandsche Historie, XXV, 58.

ties of goods for ready cash. A large quantity of ducats recently coined at Dordrecht he supposed to be intended also for the American agents.[1]

To what extent contraband trade was carried on between the United Provinces and America may be judged from reports of the English ambassador at the Hague to his government. In April, 1776, he wrote that within two days 850 barrels or 85,000 pounds of gunpowder had been shipped from Amsterdam to France. He concluded that those shipments must be for America since never before, even in times of war, had so much gunpowder been shipped from Amsterdam.[2] Orders for powder continuing to arrive from France, Yorke was confirmed in his opinion that since all those consignments were certainly destined for the American colonies, there must be means for eluding the ordinances. "In short," he wrote to Suffolk, "this is the first and almost sole market for the Rebels, tho' conducted from hence thro' so many different channels to conceal it, and to endeavour to have it appear that other countries are equal sharers with them in this mischievous commerce."[3] The reason why the Dutch engaged so much in this dangerous trade was that they obtained very high prices in America, an inducement which few merchants were able to resist. As one of the most considerable Dutch traders to North America Sir Joseph Yorke mentioned the house of Crommelin. In his opinion all attempts to stop that illegal trade would be without results since future attempts could not be prevented when the profits were so great.[4] He said that gunpowder brought a profit of more than 120 per cent. at St. Eustatia.[5] According to a statement of one R. Irvine in Rotterdam these profits were even larger. Gunpowder taken from the United Provinces to St. Eustatia and sold there had yielded 230 Dutch florins (or guilders)

[1] Desnoyers to Vergennes, September 10, 1776 (Sparks MSS., LXXXIII).
[2] Yorke to Suffolk, April 30, 1776 (Sparks MSS., LXXII).
[3] Same to same, August 9, 1776 (ibid.).
[4] Same to same, March 22, 1776 (ibid.).
[5] Same to same, April 2, 1776 (ibid.).

per cwt., that is, 46 Dutch stivers or 4s. 2d. sterling a pound, while the price in the United Provinces was only from 40 to 42 guilders per cwt. or about 9d. sterling a pound. These exorbitant profits, together with the facility of obtaining permission for the export of powder in their own bottoms, he said, would induce the Dutch merchants to run all risks. They could afford to lose two cargoes out of three and still make considerable profits. Powder was therefore exported in every possible disguise, in tea chests, rice barrels, etc., so that, in case of search, the powder would not be found by a superficial inspection of the cargo. Irvine stated further that not fewer than eighteen Dutch vessels, laden with powder and ammunition for the American market, had sailed from Amsterdam for St. Eustatia, between the first of January and the middle of May, 1776.[1]

Under these circumstances the anger of the English at the conditions existing in the United Provinces and Yorke's despair are comprehensible. In August, 1776, Sir Joseph wrote to Lord Suffolk that should the unhappy situation in America be by any accident prolonged, it appeared to him that the surest, indeed the only, way to act with the Republic was to determine what Great Britain had the right to require of a nation styling itself friend and ally, to communicate it previously in friendship to the stadtholder and the ministers, and to make a formal demand to the States General, requiring a speedy answer; letting it be known at the same time, that, in case of a refusal, His Majesty would be under the necessity of taking measures for his own security. He expressed his hope that such a step would not dissatisfy the reasonable and well intentioned; from others England could expect nothing voluntarily which would run counter to their private interest. The ambassador proposed then that Great Britain should request of the States General

[1] Irvine to Suffolk, May 14, 1776 (Sparks MSS., LXXII).
How profitable European trade with the American colonies was and how it could be carried on with comparatively small risk we learn also from the letter of Arthur Lee to von der Schulenburg of June 7, 1777 (Wharton, II, 330).

that the term of the Dutch proclamation expiring in September of the same year might be prolonged. He suggested also that an "amplification" should be demanded, having experienced the inefficiency of prohibitions, dependent on the oaths of brokers who were only proxies for merchants.[1] Yorke's suggestion fell on fertile soil in England. About a month later he received instructions from his government directing him to submit a memorial to the Dutch authorities, in which not only the renewal of the prohibitory edict, expiring on the 20th of September, was requested but more efficient measures demanded for suppressing the smuggling to the American colonies.[2]

Yorke's memorial, delivered on September 17, in execution of this direction, was received rather coolly by the States General. They replied that they could not extend the prohibitions beyond what had been done already. Every individual was at liberty to hazard his fortune in commerce. Besides, making their prescriptions more severe might result in keeping their own colonies from receiving the necessary supplies, and Great Britain could not expect the United Provinces to prepare the ruin of their own colonies.[3] The English, not satisfied with this answer, were at a loss what to do to check the Dutch contraband trade to America. Sir Joseph Yorke thought that means might be found to restrain that trade. As an effective measure he proposed to inform the United Provinces that, in case they should continue their present attitude, orders would be sent to Bengal not to let them bring home any saltpeter, since they made such bad use of their gunpowder.[4] Lord Suffolk suggested that all doubt and embarrassment could be avoided if the States General would not allow the exportation of larger military stores to the Dutch West Indies than had been

[1] Yorke to Suffolk, August 6, 1776 (Sparks MSS., LXXII).
[2] Suffolk to Yorke, September 13, 1776 (ibid.).
[3] Desnoyers to Vergennes, October 7, 1776 (Sparks MSS., LXXXIII).
The proclamation of the United Provinces was renewed by the resolution of October 10, 1776.
[4] Yorke to Eden, October 25, 1776 (Sparks MSS., LXXII).

sent annually upon an average of some years preceding the American Revolution.[1] Sir Joseph Yorke approved of such a measure, and hinted that if it should be rejected, the necessity might be urged of confiscating all the powder found in Dutch vessels sailing for the settlements of the United Provinces, unless its use for the Dutch possessions could be proved.[2] In fact, the ambassador warned the Prince of Orange as head of the West India Company to prevent all extraordinary exportations of military stores to the Dutch territories both in Africa and the West Indies.

Ever since the beginning of the Revolutionary War the chief intercourse between the United Provinces (as well as other European countries) and the American colonies had been effected by way of St. Eustatia.[3] This Dutch island therefore soon attracted the attention of the British government. According to Yorke's observations it was the rendezvous of everything and everybody that was meant to be conveyed clandestinely to the continent of America.[4] Be-

[1] Suffolk to Yorke, October 22, 1776 (Sparks MSS., LXXII).

[2] Yorke to Suffolk, October 29, 1776 (ibid.).

[3] The following discussion of St. Eustatia and the part the island played in the American Revolution is almost wholly based upon Dr. J. Franklin Jameson's most excellent and exhaustive monograph, "St. Eustatius in the American Revolution," in the American Historical Review, July, 1903, p. 683 ff. For the sake of conciseness references are mostly given only where sources besides Dr. Jameson were consulted or, in a few instances, where the details of this essay exceed Dr. Jameson's data.

[4] Yorke to Eden, May 14, 1776 (Sparks MSS., LXXII).

Besides St. Eustatia, of the Lesser Antilles the islands of Curaçao, Bonaire, Aruba, Saba and St. Martin belonged to the United Provinces. St. Eustatia—an island of an area less than seven square miles—was little more than a mass of barren rocks and had almost no production of its own (at the time of the American Revolution it did not produce more than six hundred barrels of sugar a year). The same was true of the other islands except perhaps St. Martin. The only Dutch colonies in America which had a production of any importance were those in Guiana, called after the rivers on which they were situated Surinam, Essequibo, Demerari, and Berbice (Wild, Die Niederlande, II, 320; Gazette de Leyde, April 6, 1781, p. 7); see also Hansard, The Parliamentary History of England, XXII, 220, 221.

Geographical lexicons call this island "St. Eustatius," but since all documents of this period name it Eustatia, that form is used in this paper. Similarly, the contemporary spellings "Doggersbank," "Demerari," and "Trinconomale" are used.

ing a free port, it became during the American Revolution the store house for goods of all nations. Here the English bought the products of America, and the Americans the manufactures of England; here, after France had joined the war, the British merchants met the planters from the French West Indian islands; and here, finally, was the chief market where the Americans obtained their military stores. After the outbreak of war between France and England many planters and merchants of the British West Indian islands, especially of St. Kitts—also called St. Christopher—stored their goods at St. Eustatia to secure them from capture by the French. The whole island was one vast store house, equally useful to friend and foe.[1] Still the English government, anxious to suppress the rebellion in North America, regarded St. Eustatia in a different light. Report after report arrived at London of the numerous and large purchases of arms and ammunition effected by the Americans on that island. The principal agent in the business was said to be Mr. Isaac van Dam, a Dutch resident of St. Eustatia. It was learned that in one instance he had sent 4000 pounds of gunpowder on board a Virginia vessel to North Carolina in support of the rebellion; then he was found to have sent £2000 sterling to France for the purchase of powder to be sent to St. Eustatia for transmission to the American colonies. Harrison sent 6000 pounds of powder from Martinique, and then 14,100 pounds more from St. Eustatia. Of these 10,000 were shipped to Charleston; the rest, to Philadelphia.[2] Later a single vessel is said to have exported 49,000 pounds.[3] Sir Joseph Yorke was directed to express to the States General the dissatisfaction of George III and to give them to understand that they must not be surprised if the English men-of-war in the vicinity of St. Eustatia henceforth should show more vigilance and less reserve.[4]

[1] Hannay, Rodney, 151–152.

[2] Maryland Archives, XI, 494; XII, 171, 268, 332, 423; Force, American Archives, fourth ser., VI, 612, 905; fifth ser., I, 1025; II, 965; III, 513; Jameson, St. Eustatius, 688.

[3] August 2, 1776 (Sparks MSS., LXXII).

[4] Suffolk to Yorke, April 12, 1776; Yorke to Suffolk, April 19, 1776 (Sparks MSS., LXXII).

Thereupon the States General assured Sir Joseph of their disapproval of such illegal proceedings on the part of their subjects. When Yorke reported this answer to London, he could inform his superiors at the same time of the death of van Dam, who had made a declaration before his death that the consignments of contraband to North Carolina had been effected on the account of French merchants.[1] St. Eustatia was now guarded by the English in such a way that it became almost impossible to enter even the necessary provisions for the inhabitants of the island. This caused great indignation in the United Provinces, and some Anti-Orangists even proposed to blockade, in return, the residence of the British ambassador at the Hague.[2]

The governor of St. Eustatia, Johannes de Graaf, had been appointed in the middle of the year 1776, his predecessor being thought by Great Britain to have favored the contraband trade. It was soon evident that the new governor did no better. "This day the Port of Statia is opened without reserve to all American vessels, and I find that the salutes of their armed vessels are returned at St. Croix as well as at Statia," wrote Captain Colpoys to Vice-Admiral Young from Basseterre, St. Christopher, on November 27, 1776.[3] Yorke had also intimated to the Dutch authorities that de Graaf should be cautioned. This was done by the direction of the Prince of Orange. Still the exportation of contraband was continued at Amsterdam with the same zeal.[4] But, on October 22, Yorke could write to his government that the contraband trade to the West Indies was suspended at present, occasioned, as he believed, by the late "glad tidings" from Long Island.[5] In January of the

[1] Yorke to Suffolk, May 31, 1776 (Sparks MSS., LXXII).
[2] Desnoyers to Vergennes, October 8, 1776 (Sparks MSS., LXXXII).
[3] Sparks MSS., LXXII (following a letter of Yorke to W. Eden, dated March 7, 1777).
[4] Yorke to Suffolk, September 10, 1776 (Sparks MSS., LXXII).
[5] Yorke to Suffolk, October 22, 1776 (Sparks MSS., LXXII).
The "glad tidings from Long Island" were the news of the disaster of the Americans at Brooklyn Heights when Sullivan and Lord Stirling (William Alexander) with some eleven hundred men were taken prisoner by General Howe on August 27, 1776.

following year, 1777, de Graaf complained to the directors of the West India Company about the conduct of English vessels. British men-of-war, he wrote, were cruising daily in the roads of St. Eustatia, seizing, even under the cannon of the fortress, vessels intending to enter or leaving the port. The island must therefore almost be considered blockaded and its commerce would be ruined. He asked to be instructed as to what course he should pursue since he was anxious to avoid everything that could give to Great Britain the slightest pretence for a complaint. Though the Dutch, he said, were perfectly entitled to repulse the British aggressions by force, prudence must persuade the island to suffer the hostilities, owing to want of sufficient means. This would, however, be very hard and disadvantageous for St. Eustatia.[1] Yet the hardships thus pictured by de Graaf were only the preliminaries of greater troubles which the English had in store for the governor and the inhabitants of the island.

In February, Sir Joseph Yorke received a letter from his government, informing him of a "flagrant insult offered to His Majesty's colours, in the public honour paid by the principal Dutch fort [St. Eustatia] to a Rebel brigantine carrying the flag of the Rebel Congress." This offence, the missive stated, was not only proved by a letter of President Greathead of St. Christopher, but was uncontradicted by de Graaf's answer to it. The ambassador was then directed to demand of the States General a formal disavowal of the salute, and the immediate dismissal and recall of de Graaf. The King of England would not allow the United Provinces to amuse him with assurances, and he would, therefore, instantly give orders for such measures as he thought "due to the interests and dignity" of his crown.[2]

[1] Gouverneur de St. Eustache aux directeurs de la Compagnie des Indes occidentales, January 28, 1777 (Sparks MSS., LXXXII).

[2] Suffolk to Yorke, February 14, 1777 (Sparks MSS., LXXII; Colenbrander, Patriottentijd, I, 124).

The salute of the "Andrew Doria" by Fort Orange, on November 16, 1776, has been claimed to be the first salute to the American flag abroad (Bancroft, History of the United States, IX, 293;

On the following day the Lords of Admiralty in London were instructed to give

"immediate orders to the Commander in Chief of His Majesty's ships and vessels at the Leeward Islands to station proper cruizers off the harbour of St. Eustatia, and to direct their commanders to search all Dutch ships and vessels going into and coming out of the said harbours, and to send such of them as shall be found to have any arms, ammunition, clothing, or materials for clothing on board, into some of His Majesty's ports within the limits of the command of the said Commander in Chief . . . , to be detained there until further orders."[1]

On February 21, Yorke delivered a memorandum to the States General according to his instructions. He declared that the complaints were based on authentic documents (which he appended to his note), as Their High Mightinesses would admit after perusal. De Graaf, besides having allowed an unlimited commerce with the Americans, had neglected his duty to such a degree as to allow an American pirate to take an English vessel almost within reach (presqu'à la portée) of the cannon of his island. To crown his insult to the British nation and all the powers of Europe, he had caused the fortress of St. Eustatia to answer the salute of a ship carrying the rebel flag. Yorke continued that all the friendly representations which the president of the neighboring island of St. Christopher had made to de Graaf had been answered by the latter in a most vague and unsatisfactory manner. The Dutch governor had even refused to enter into a discussion with or give an explanation to a member of the King's Council of St. Christopher, who

B. F. Prescott, The Stars and Stripes: The Flag of the United States of America; When, Where and by Whom was it first Saluted? [Concord, 1876]; Dr. W. E. Griffis, "Where our Flag was first saluted," New England Magazine, n. s., VIII, 576). Still, in a letter dated October 27, 1776, and sent from the Danish island of St. Croix to Vice-Admiral Young, it is said of an American schooner, which had departed two days before with a small cargo of powder: "But my astonishment was great to find such a Commerce countenanced by the Government here. The vessel went out under American Colours, saluted the Fort and had the compliment returned the same as if she had been an English or Danish ship" (Letter of October 27, 1776, in Bancroft MSS.; Jameson, St. Eustatius, 691).

[1] Suffolk to the Lords of Admiralty, February 15, 1777 (Sparks MSS., LXXII).

had been sent by President Greathead to St. Eustatia for that express purpose. The ambassador then stated the demands of his king and concluded, citing verbally from his instructions, that satisfaction must be given.[1]

The first enclosure with the memorandum was a letter of President Greathead to Governor de Graaf, dated December 17, 1776. Greathead wrote that although the rebel colonies had been said for some time to be receiving protection at St. Eustatia, he had not previously complained about this. He could, however, not remain silent longer, because authentic reports had verified these rumors. Not only had provisions and military stores been furnished the Americans daily and openly by inhabitants of the island, but even armed vessels had sailed from St. Eustatia with the avowed intention of making prizes of ships and property of peaceful and loyal English subjects. He referred in particular to the sloop "Baltimore Hero," which, carrying the flag of the Continental Congress, had on November 21 attacked and seized under the cannon of St. Eustatia a brigantine and her cargo. The brigantine, belonging to one McConnell, an English subject living on the island of Dominica, had been on her way from St. Christopher to St. Eustatia. The American sloop returned afterwards to the roads of St. Eustatia, enjoying there apparently every protection. Greathead stated further that the American armed vessel, "Andrew Doria" (Captain Robinson), flying the rebel flag, had entered the roads of St. Eustatia about the middle of November and saluted Fort Orange by 13 guns, which were answered by the fort in the solemn way that was due to the flags of independent and sovereign states. The "Andrew Doria" had thereupon been suffered to take on board gunpowder and other articles of war as well as provisions for the use of the American army. The Americans having usurped their power, their armed ships were to be con-

[1] Yorke's memorandum, February 21, 1777 (Bancroft MSS., America, Holland and England; Sparks MSS., LXXXII; Vaterlandsche Historie, XXV, 111; Sparks Dutch Papers; Stevens Papers in the Library of Congress).

sidered pirate vessels. To the disgrace of all public faith and national honor it had been left for a Dutch colony avowedly to assist the Americans in their treason, and to become the protectors of their buccaneering. It was a fortress of Their High Mightinesses which first recognized the American colors, until now unknown in the catalogue of national flags. Greathead, in conclusion, demanded full satisfaction for the insult offered by Fort Orange to His Britannic Majesty's flag, also effective means to prevent a repetition of such incidents, and an indemnity for the pirate act of the "Baltimore Hero" together with an exemplary punishment of the culprits. The president of St. Christopher sent Mr. Stanley, member of the King's Council and Solicitor General, to present the complaint to Governor de Graaf and to wait for an answer.

De Graaf asked in his reply of December 23 (forming the second appendix to Yorke's memorial) for authentic proofs and witnesses of the alleged daily and open furnishing of contraband to the Americans, since he was prohibited by his commission as well as the laws of his country to prosecute persons without plaintiff and witnesses, or to condemn them without evidence. The governor rejected the accusation of having protected and furthered piracy, and he denied therefore his obligation to give indemnity in the case of the "Baltimore Hero." He said that he knew himself to be free of partiality and that he must not be expected to disturb the commerce and navigation of St. Eustatia and of the Dutch nation. He flattered himself that he was able to justify his attitude toward the American vessel "Andrew Doria." No one on earth, he declared, but his superiors was entitled to call him to account for acts of administration effected by him.

Greathead, on December 26 (Yorke's appendix No. three), expressed his disapproval of de Graaf's conduct as not in conformity with the treaties existing between Great Britain and the United Provinces, and informed the governor of his intention to lay the matter before his royal master.

Appendix four, dated December 16, 1776, contained an affidavit of a certain James Fraser and others before John Stanley, member of the King's Council of St. Christopher and Solicitor General of the British Leeward islands in America. The "Andrew Doria" had according to this affidavit been saluted by Fort Orange on or about November 16, 1776. The American vessel was said to have fired eleven guns and the fort nine. The witnesses stated that they had learned that the commandant of the fort had hesitated to answer the salute, but that the governor had ordered him to do so.

In appendix five, dated December 9, 1776, was presented the affidavit of one Matthew Murray, who had deposed that he sailed from St. Christopher to St. Eustatia about December 1, 1776. When their boat arrived in the waters of St. Eustatia by the side of a sloop, a fellow passenger of Murray's (whose name, however, no one on board had heard before), exclaimed: "You may all know now, who I am. I am "constapel" (gunner?) of the sloop called the "Baltimore Hero," an American privateer, the same which, some days ago, captured the Irish brig off St. Eustatia!" To the memorandum was also appended the affidavit of one John Trottman, a sailor who had deserted from the "Andrew Doria." He declared that the American vessel had sailed for St. Eustatia with the intention of buying there clothes and other necessities for the American army.[1]

Yorke, evidently self-complacent, reported that he had executed the orders of His Majesty the King. He stated that he had informed the Prince of Orange and the Duke of Brunswick of what had happened, and that both had been highly surprised, since they had received no news of such transactions. They disavowed the proceedings of the governor of St. Eustatia, and Yorke said he had no doubt that the States General would do the same and give every satisfaction possible.[2] The Prince of Orange and the Duke

[1] Sparks Dutch Papers.
[2] Yorke to Suffolk, February 21, 1777 (Sparks MSS., LXXII).

of Brunswick were certainly surprised at what they heard concerning de Graaf, but they were more indignant at Yorke's language and that of his government. Brunswick wrote to the stadtholder that Yorke's note to the States General was certainly the most arrogant missive ever transmitted to a sovereign. The threat expressed by the King of England in the conclusion of the memorandum was an insult as well as an injustice to the Republic. The latter could not comply wtih the king's demands as long as she desired to be considered a sovereign and independent state. What made the matter worse, the duke said, was the verbal declaration of the English ambassador to the States General that he would be recalled in case satisfaction could not be given within three weeks. England's contempt for the Republic was evident.[1] The duke was far from defending the conduct of the governor of St. Eustatia; on the contrary, he was of opinion that de Graaf should be called upon to justify his conduct, and that, in case the accusations were found to be true, England ought to be given satisfaction. The honor and dignity of the Republic required, however, that such satisfaction should be denied until the accused had been heard. It was the duty of the Republic to be firm on this occasion, and to take measures for the protection of her commerce and her ports. The duke hinted that the court of St. James had taken this step only in order to justify her searching and seizing of Dutch vessels.[2]

[1] Yorke, who had represented Great Britain in the Netherlands since 1751, was apparently not the right representative of his country there under the circumstances. He was always inclined to carry matters to extremes, and offended continually the national feelings of the Dutch by the imperious manner in which he carried out his instructions. As early as 1769 the Duke of Brunswick wrote to the stadtholder that the way in which Yorke treated things was always very disagreeable, and that so long as he (Yorke) was at the Hague England would never be of any service to the United Provinces. It would therefore be desirable in the interest of the stadtholder and the whole country that Yorke should be removed. According to the Dutch envoy at the court of St. James, Count van Welderen, Yorke was the greatest enemy of the Republic (Nijhoff, Brunswijk, 142). In the present case Yorke seems to have been less guilty of arrogance, since he used in the memorial apparently the terms of his instructions.

[2] Nijhoff, Brunswijk, 149–152.

Yorke was unconcerned about the indignation which his memorandum roused throughout the United Provinces. "Had any other Governor of any other Power done the same," he wrote to W. Eden, "we should have done wrong not to have exacted the same satisfaction." Sir Joseph Yorke thought it would become public more easily in the United Provinces than anywhere else and would be a good lesson for other powers. He informed Lord Suffolk confidentially that the memorial had raised a violent fermentation through the country, that the exchange was alarmed and the people in general frightened. Since his note was a categorical demand and did not imply a negotiation, he expected that it would be complied with.[1]

Before an answer was given to the ambassador's memorial, the States General received, through the West India Company, a letter from de Graaf, written at St. Eustatia on January 28, 1777, in which he reported that the English brigantine "May," skipper William Taylor, had been captured by the armed American bark "Baltimore Hero," commanded by Thomas Waters, between St. Christopher and St. Eustatia on November 21, 1776, and sent to Maryland. The owners of the "May," merchants of the island of Dominica, complained about it to Thomas Shirley, the governor of Dominica, and to James Young, the Vice-Admiral of the English squadron at Antigua, stating that the "Baltimore Hero" was fitted out at St. Eustatia and partly belonged to residents of that island. They applied for indemnity to de Graaf. The "Baltimore Hero," the governor stated further, had stayed at St. Eustatia from November 11 to 20, 1776, neither importing nor exporting anything, except taking with her some necessary provisions and water. On December 2 the bark returned to St. Eustatia. Though no complaints had been received then, de Graaf questioned Waters why he had taken the "May," whether his vessel was fitted out at St. Eustatia, and whether she belonged wholly or in part to merchants there. Waters thereupon

[1] Yorke to Eden, March 7, 1777 (Sparks MSS., LXXII).

showed his commission from Maryland, issued by the Council of Safety, John Hancock, President, declaring under oath that his ship had not been fitted out at St. Eustatia and was not owned by residents of that island. De Graaf concluded by stating that at St. Eustatia no American war vessel had been received and saluted, but only merchant vessels.[1]

Yorke, having learned of de Graaf's report, informed his government of it. Sir Joseph said that the governor endeavored to justify himself by stating that it was a merchant vessel which had been saluted, and not a war vessel; but all impartial people condemned him. The ambassador also announced that the Dutch minister at the court of St. James was to deliver a resolution regarding St. Eustatia to the British government.[2] This was true. The States General, indignant at the English ambassador's offensive language, resolved to have their answer to his memorial delivered to the British government not through him, but through Count Welderen. The latter accordingly conveyed to George III the complaints of the States General at the reproaches expressed in Yorke's memorial and at the threatening tone of the latter, which were unacceptable to a sovereign and independent state, but above all inadmissible between neighbors united by the ties of good harmony and of mutual friendship. De Graaf, Welderen continued, had been instructed to come home in order to answer the charges pending against him. The governor was also to give an account of all that had come to his cognizance concerning the American colonies and their ships ever since he had taken over the command of the island. The States General would not hesitate to disavow acts of their officials which might in the least be construed to be a recognition of the sovereignty and independence of the American colonies. The Dutch governor and commanders in the West Indian colonies had again re-

[1] Missive van Representant en Bewindhebberen der Westindische Compagnie, March 22, 1777 (Sparks Dutch Papers; Stevens Papers in the Library of Congress).

[2] Yorke to Suffolk, March 25, 1777 (Sparks MSS., LXXII).

ceived instructions from the States General to observe strictly the orders and regulations against the exportation of military stores to the American colonies.[1]

Three days after van Welderen had handed this memorial to Lord Suffolk for transmission to the English king, the orders of February 15 to the Lords of the Admiralty were revoked, and the latter instructed to return to the government of St. Eustatia such Dutch vessels as were seized and detained merely in consequence of those orders.[2] On April 10, Lord Suffolk handed to Count van Welderen the king's answer. It was a declaration that George III could not consider the English memorandum of February 21 contrary to the respect which sovereign and independent states owed to each other. His Majesty was pleased that the States General had complied with his request in recalling their governor and renewing to the Dutch governors and commanders in the West Indies the orders concerning contraband trade.[3]

The British answer was not well received in the United Provinces. Burgomaster Temminck of Amsterdam was said to have been very much vexed that Count Welderen accepted Lord Suffolk's note without criticizing it. Governor de Graaf was not to be recalled definitely, as stated by the English note, but he was only to return in order to explain his conduct. Temminck did not doubt that de Graaf would be able to justify his actions and in that case it would be impossible not to send him back to his island. Yorke too does not seem to have been convinced, at this time, of the reliability and adequacy of the material which he had transmitted to the States General as evidence of de Graaf's offences. He asked his government now for additional proofs, especially for particulars from the accounts—sent from St. Christopher—of smuggling at St. Eustatia.

Governor de Graaf became apparently henceforth more

[1] Count van Welderen's memorial, March 26, 1777 (Bancroft MSS., America, Holland, and England; Sparks MSS., CIII; Stevens Papers in the Library of Congress).

[2] Above, p. 46. Suffolk to the Lords of the Admiralty, March 29, 1777 (Sparks MSS., LXXII).

[3] Suffolk to Welderen, April 10, 1777 (Bancroft MSS., America, Holland, and England; Sparks MSS., CIII).

severe in the supervision of the commercial transactions at St. Eustatia. Some residents of the island, according to Yorke, submitted a petition to the directors of the West India Company, complaining of de Graaf's severity in visiting their vessels. They said they were not able to export the smallest quantity of powder or other military stores for their own use, and they requested therefore that the governor be removed. The States General, however, did not give credit to their complaints,[1] and it is possible that this petition was recognized as a political manoeuvre in connection with de Graaf's temporary recall. Another cause of the ruin of the trade of St. Eustatia was, as Yorke informed his government, the long credit granted to the North American colonies by St. Eustatia merchants. He added that de Graaf continued to salute the Americans that stole into the port, but according to his regulation of honors, with two guns less than the king's ships. The latter, Yorke concluded, no longer saluted the port.[2]

The St. Eustatia incident formed a good object lesson for the United Provinces. They saw what they had to expect from Great Britain, and awakened to the fact of their own weakness, and the danger threatening their commerce and navigation. The result was a new impulse to increase the Dutch navy. The province of Holland especially asked for the fitting out of a squadron to be sent as convoy to the West Indies, and urged contributions by the other provinces for the building of twenty-four new ships of the line. In May, 1778, the last province gave her consent to this measure.[3]

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[1] Yorke to Eden, April 25, 1777 (Sparks MSS., LXXII); Resolution of the States General, April 24, 1777 (Sparks MSS., CIII). Yorke wrote, however, to Lord Suffolk, May 2, 1777, that the petition was not the work of inhabitants of St. Eustatia, but was drawn and signed by a number of masters of vessels navigating to the Dutch West Indies (Sparks MSS., LXXII).

[2] Yorke to Eden, July 4, 1777 (Sparks MSS., LXXII).

[3] Colenbrander, Patriottentijd, I, 126.

According to Franklin and Deane, the States General immediately ordered twenty-six men-of-war to be put upon the stocks (Franklin and Deane to the Committee of Secret Correspondence, March 12, 1777, in Wharton, II, 289). The commissioners were apparently mistaken regarding the exact number of ships to be built.

In August, 1777, the directors of the West India Company again presented to the States General a letter from de Graaf (dated June 30, 1777). This time he requested to be excused from coming over to Europe. By such a precipitate departure from St. Eustatia, his family affairs and private business would greatly suffer. He thought furthermore that the voyage was too dangerous now, since the hurricane season had begun. His body being still weak from a recent illness, he feared too that his health would be injured by a stay in Europe during the winter. In addition to his former report he mentioned some details of the incidents which had caused such violent accusations against him. Fort Orange, he declared, answered the salute of the "Andrew Doria," as a merchant vessel, according to a long established custom of the island, with two guns less than she had fired. The return of the salute of such ships was merely an act of courtesy, in which no attention was paid to their nationality. The answering of the salute of the "Andrew Doria" did not therefore imply the recognition of the independence of North America. Relative to the commerce with North America effected by American vessels, de Graaf explained that St. Eustatia had to rely upon that country for her necessary provisions, as flour, bread, Indian corn, rice, salted fish, etc.; as well as timber for houses, barrels, etc. Ever since he had taken over the command of the island he considered it his duty not to disturb this commerce. Besides, he had never received any orders from his superiors to do so. That this trade had increased, as Great Britain pretended, was contrary to facts. The danger attending American navigation since the beginning of the Revolution was too great to allow extensive trade on their part. As to the exportation of contraband to North America, he said, he was conscious of having complied as strictly with the regulations issued by the States General as was in his power. In cases where the least suspicion of an illegal exportation existed, the cargo of the vessels in question was examined. He had now even appointed a sworn

examiner to visit all American vessels at their arrival as well as their departure, in order not only to prevent the exportation of contraband but also the manning and equipping of the vessels. Of course, there were always men who would violate the laws, or find ways and means to evade them. Since this had happened at all times and places, no reproach could be cast upon him for such transgressions. With reference to the taking of an English vessel near the fortress of St. Eustatia, the governor declared that this was not done within the range of the cannon of the island. It had therefore not been more in his power to prevent the capture than if the latter had taken place off the coast of Africa.[1] In October the States General resolved finally not to comply with de Graaf's request to be excused from coming to the United Provinces.[2]

The governor of St. Eustatia addressed a serious complaint to the Dutch West India Company on June 28, 1777, which was laid before the States General. The English man-of-war "Seaford" had seized and taken to the island of Antigua two Dutch vessels, which had set sail at St. Eustatia for Zealand on the day before. James Young, the commander of the English squadron in the West Indies, had tried to justify the capture by stating that the "Watergeus," one of the Dutch vessels, had on board products of the British American colonies in rebellion, previously imported into St. Eustatia. This was contrary to a recent act of Parliament, forbidding all commerce and intercourse with the North American colonies. The other ship, the "Hoop," was accused of having had on board gunpowder and ammunition. Young had also complained about the conduct of one van Bibber at St. Eustatia, said to be an agent of the

[1] Missive van Bewindhebberen der Westindische Compagnie, August 27, 1777 (Sparks Dutch Papers; Stevens Papers in the Library of Congress).

[2] Resolution of the States General, October 6, 1777 (Sparks MSS., CIII). Yorke called de Graaf the "dirty governor of that nest of smugglers" (Yorke to Suffolk, private, September 24, 1777, in Sparks MSS., LXXII).

American Congress.[1] Van Bibber was consequently arrested by the governor, but when de Graaf asked for evidence against him Young replied that the only proof he had was the deposition before the court of the Vice-Admiralty at Antigua of one George Rall. The latter was the commander of a small American privateer called "Jenny" which had been taken by Captain Colpoys. Rall had declared that van Bibber, the American agent, had sent several men on board the "Jenny" from other American vessels, then at St. Eustatia. Bibber had subsequently ordered him to pursue a sloop, domiciled at Antigua, which had shortly before left St. Eustatia, laden with cotton, cloth, etc. These proceedings, Rall stated also, had been public and were in no way prevented by the government of the island. Abraham van Bibber, interrogated upon these charges before the assembly of St. Eustatia, asserted that he had not furnished people to the "Jenny," nor given orders to Rall, except that he should bring up his prizes at Martinique. Although Young could not furnish sufficient evidence or witnesses, van Bibber was continued in custody. He seized, however, an opportunity to escape from St. Eustatia. De Graaf informed Vice-Admiral Young that the "Watergeus" had sailed from St. Eustatia for the port of Middleburg, province of Zealand, with products of America and the West Indies, and that the "Hoop" was returning to Flushing with 1750 barrels of gunpowder and three barrels of flint which could not be sold at St. Eustatia. He demanded the

[1] Abraham van Bibber was the agent of the state of Maryland at St. Eustatia as early as March, 1776, taking care of cargoes sent or underwritten by that state. Later in the year van Bibber of St. Eustatia and Richard Harrison of Maryland formed a copartnership. They solicited from the Virginia Committee a portion of their custom (Maryland Archives, XI, 266, 442, 443, 494, 501, 555; Force, American Archives, fourth series, VI, 905; manuscript letters of March 11, 23, 28, June 14, July 25, August 15, 1776, in the Virginia Archives; Jameson, St. Eustatius, 685). Van Bibber claimed to be on the best of terms with Governor de Graaf, and urged the Maryland Council to send all their vessels to St. Eustatia rather than to any other island (Force, American Archives, fifth series, II, 180; III, 513, 759; Jameson, St. Eustatius, 690, 691; Maryland Archives, XII, 423, 456).

immediate release of the two ships and their cargoes and an indemnity for costs and damages, caused by the seizure and detention of the vessels. De Graaf asked if the admiral could think that the United Provinces would permit commerce and navigation from one Dutch possession to the other to be disturbed in such a way as long as the Republic formed an independent and sovereign state.[1]

The proposition of the province of Holland to send a squadron as convoy to the West Indies was now at last approved by the States General. Originally it was intended to despatch about twenty vessels, but it was not found possible to man more than eight. They set sail in December, under the command of Vice-Admiral Count van Bylandt, under strict orders to protect only the legal trade.[2] In April of the following year (1778) Count van Bylandt sent home a confidential report on the condition of St. Eustatia. It showed to what degree the United Provinces had neglected the defence of their West Indian possessions. Bylandt informed the States General also of hostilities committed by English privateers on the river Demerari, and of his intention to despatch a man-of-war there. British privateers even anchored at St. Eustatia, under the pretext of being compelled to do so for want of provisions. They did not stay long in the harbor but cruised afterwards in the neighborhood of the island. Bylandt emphasized the necessity of putting St. Eustatia in a position of defence which would enable her to maintain herself against an enemy for some time and to protect her flourishing trade. Many complaints were presented to him by inhabitants of the island about the governor. According to these people the latter acted arbitrarily in the administration of St. Eustatia. The assembly of the island, consisting of one chairman (Capitein der

[1] Missive van Bewindhebberen der Westindische Compagnie, August 26, 1777 (Sparks Dutch Papers; Stevens Papers in the Library of Congress).

[2] According to Yorke, however, most of the ships had sailed without convoy (Yorke to Suffolk, December 23, 1777, in Sparks MSS., LXXII). The squadron remained at or near St. Eustatia until the year 1779 (Colenbrander, Patriottentijd, I, 125).

Burgerije) and four councillors, was wholly in the hands of de Graaf. The governor was rich, being owner of a number of farms and holding mortgages on many others. This resulted in making many people dependent on him, so much the more as he had given several important administrative offices to relatives of his.[1] That Count Bylandt was not only a good sea-captain, but also a diplomat, may be concluded from the fact that the English were satisfied with his conduct.[2] The British as well as the French ambassador at the Hague had predicted trouble when the sending of a convoy to the West Indies was considered by the Provinces.[3] His position was difficult, but during his whole stay at St. Eustatia no conflict of any significance occurred.

In accordance with the resolutions of the States General of March 21 and October 6, 1777, de Graaf sailed for the United Provinces in order to answer the charges brought against him by Yorke. Two directors of the West India Company had been instructed by the States General to examine de Graaf. After his arrival in July, 1778, he was directed to answer in writing the following three charges: Did he admit the equipping of American vessels at St.

[1] Secret Resolution of the States General, June 4, 1778 (Sparks MSS., CIII; Sparks Dutch Papers; Stevens Papers in the Library of Congress).

[2] Yorke to Suffolk, August 25 and 28, 1778 (Sparks MSS., LXXII). Lord Macartney, governor of Grenada, thought, however, that "to see a man of Count Byland's Birth and Quality receive aboard his Flag Ship the Masters of Rebel Privateers with all the attention and civility due to their equals in regular service excites one's pity and contempt" (Jameson, St. Eustatius, 694).

[3] "A party at Amsterdam are endeavouring to push the States to give convoy to the West-Indian trade, which will be plunging into all the inconveniences and squabbles of the last War, and therefore I hope this Government will be too prudent to give into, for I make no scruples to tell them as my private opinion, that England can never suffer such a trade to be so cover'd, when the proofs of the ill use made of our indulgence are so notorious" (Yorke, September 24, 1777). "Il n'est pas douteux que malgré la protection des vaisseaux de guerre, les Anglois voudront continuer de visiter les navires marchands. On m'assure même que M. Yorke l'a positivement déclaré, et il me paroit alors impossible d'éviter de part et d'autre des actes violents" (Vauguyon, October 31, 1777, in Colenbrander, Patriottentijd, I, 125, 126, footnote).

Eustatia? Did he allow, almost under the cannon of the island, the capture of an English vessel by an American pirate? Did he permit his fortress to return the salute of a vessel carrying the American flag?

In addition de Graaf was to state everything that had come to his knowledge, during his stay at St. Eustatia, concerning the American colonies and their vessels.[1] The governor answered with a very interesting report covering, appendixes included, about 340 printed folio pages. He said in general, only much more in detail, what he had stated already in his previous reports. His defence was exceedingly clever and convincing. The West India Company submitted his missive to the States General, informing them that, after careful examination, they had nothing to add to his report, except that in their opinion the United Provinces had more cause to complain about the conduct of Great Britain than the latter about that of the Republic. The two directors of the West India Company finally recommended de Graaf to the protection of the States General, expressing their hope that the latter would also find the governor innocent. De Graaf's report was then examined by the several provinces. Holland made a lengthy resolution in favor of the governor, instructing their deputies to the States General accordingly.[2] A petition of de Graaf to be allowed to return to his post[3] was finally complied with by the States General and he went back to St. Eustatia.[4]

[1] Bicker and Warrin (directors of the West India Company) to the States General, March 23, 1779 (Sparks Dutch Papers; Stevens Papers in the Library of Congress; "blue book" in possession of Dr. W. E. Griffis, Ithaca, N. Y.; Jameson, St. Eustatius, 692, note 1).

[2] Extract, Resolution of States of Holland and Westfriesland, August 6, 1779 (Sparks Dutch Papers).

[3] De Graaf to the States General, June 18, 1779 (Sparks Dutch Papers).

[4] "De Graaf went out again as governor, and conducted himself so acceptably to the Americans that two of their privateers were named after him and his lady; and his portrait, presented sixty years afterward by an American citizen grateful for the 'first salute,' hangs in the New Hampshire state-house [it was copied in

In concluding this discussion of the St. Eustatia controversy it may be mentioned that the commerce between the United States and the United Provinces was carried on more and more directly now. Thulemeier, Frederick the Great's envoy at the Hague, reported to his master in the beginning of the year 1778 that the commerce of the United States with St. Eustatia had almost ceased. The proximity of the English fleets was too great a danger for the Americans. The Dutch established their offices at Bordeaux and other French ports. In July of the following year, he informed the king that the commerce of the Republic with North America became larger every day. No less than ten vessels, equipped by Congress, were lying in the harbor of Amsterdam. An American agent by the name of "la Serre" resided there, without, however, being recognized by the regents. Still the contraband trade with the United States was decreasing because the establishment of factories by the Americans had made considerable progress. They were therefore less dependent on Europe for their gunpowder, ammunition, and other warlike articles.[1] Sir Joseph Yorke from time to time also sent reports to his home government, to the effect that commerce with St. Eustatia was reduced. From other sources, however, we may conclude that there was rather a continuous increase. John Adams, after his return from his first mission to Europe, wrote in a letter to the President of Congress, "From the success of several enterprises by the way of St. Eustatia it seems that the trade between the two countries [United States and United Provinces] is likely to

Surinam from a painting owned there by de Graaf's grandson]. Of his defense no more need now be said than that an observance of neutrality which gave to the one belligerent such absolute contentment and to the other such unqualified dissatisfaction can hardly have been perfect" (Jameson, St. Eustatius, 695).

[1] Thulemeier to Frederick II, January 16, 1778, July 23 and September 28, 1779 (Bancroft MSS., Prussia and Holland). Thulemeier apparently misspelled the name of the American agent and, no doubt, meant Stephen Sayre, who, according to Ambassador Yorke, was in Amsterdam in 1779. Sayre was a disreputable character (Wharton, Introduction, sec. 146, 150, 192 ff.).

increase, and possibly Congress may think it expedient to send a minister there [to the United Provinces]."[1] Vice-Admiral Bylandt stated in the journal which he kept during his command at St. Eustatia in 1778–1779 that 3182 vessels sailed from the island during the thirteen months of his stay there.[2] It was said that in 1779 more than 12,000 hogsheads of tobacco and 1,500,000 ounces of indigo were shipped to St. Eustatia from North America, in exchange for naval supplies and other goods from Europe.[3]

Besides the Dutch contraband trade and the conduct of the governor of St. Eustatia, another incident aroused the anger of the English against the United Provinces, furnishing a pretext for serious reproaches on the part of Great Britain later. This was the admission of the American sea-captain John Paul Jones with English prizes to the Dutch waters.

On October 4, 1779, Jones appeared at the Texel and anchored there with the English vessels "Serapis" and "Comtesse de Scarborough" which he had taken in the North Sea. His ships were flying the American flag. As soon as Sir Joseph Yorke learned of this, he called upon the Prince of Orange. The latter told him that he had given immediate orders to take no notice of the American flag. He hoped, besides, that the Dutch authorities might be able to oblige Jones to leave immediately with his prizes. Yorke replied that the treaties between England and the United Provinces would require more than that. The prince was, however, of the opinion that American ships coming in with prizes would all have French commissions and colors,[4] and that it would therefore be difficult to act against those vessels. The president of the States General, to whom

[1] John Adams to the President of Congress, August 4, 1779 (C. F. Adams, The Works of John Adams, III, 282).

[2] Jameson, St. Eustatius, 686; De Jonge, Geschiedenis van het Nederlandsche Zeewezen, IV, 384.

[3] Nieuwe Nederlandsche Jaerboeken, 1781, p. 794 (Jameson, St. Eustatius, 686).

[4] In the previous year (1778) France had joined the war against England.

Yorke also applied, answered at first evasively that the States General had no official information of the incident yet, and were therefore at present unable to take any steps in the matter. A few days later the president informed the ambassador, however, that the affair had been brought to the knowledge of the States General, but that it was complicated in so far as the American captain would probably produce a French commission. While Yorke's previous appeals had been informal, he submitted an official memorial to the States General on October 8, after some conferences with Duke Louis. Sir Joseph claimed that Jones was a rebel and pirate, because the revolting colonies had no power to issue legal commissions. Yorke therefore demanded the restoration to Great Britain of the two vessels with their officers and crews. He even tried to have Jones arrested. The High Bailiff, Mr. Dedel, declared, however, that he was not authorized to effect the arrest, unless evidence and affidavits of robberies or demands of money were presented to him against Jones. Since the ambassador was not able to comply with these requirements, his attempt failed.[1] After a request by Jones and repeated appeals by Yorke, the States General authorized the admiralty at Amsterdam to have sick and wounded on board of Jones' ships taken on shore and cared for.[2]

Otherwise the Dutch government was still inactive. Yorke wrote home that the Dutch were puzzled to the highest degree, and, foreseeing dangers and difficulties on all sides, they did nothing at all. The ambassador said he looked upon the Jones incident as a lucky circumstance. The captain had come to Amsterdam and was insulted when he appeared in the coffee houses. Yorke thought therefore

[1] Yorke to Weymouth, October 8 and 12, 1779; Yorke's memorial of the same date (Sparks MSS., LXXII; Bancroft MSS., America, Holland and England).

[2] Extract, Resolution of the States General, October 15, 1779 (Sparks Dutch Papers). Yorke reported to his government that the wounded in Jones' fleet had been cared for, and paid this tribute to the American: "Jones has so far acted humanely" (Yorke to Weymouth, October 22, 1779, in Sparks MSS., LXXII).

that the "intrigue of the Court of Versailles," as he termed it, would advance the English cause in the United Provinces.[1] The British ambassador does not seem to have been well informed in this case, because, according to other records, Jones was received enthusiastically by the Dutch people. In the city theater at Amsterdam a public ovation was given him and songs in his praise were sung in the streets.[2] That the French had their hands in the affair was soon obvious when two French cutters entered the Texel and anchored near Jones' ships.[3] Even a fortnight after Yorke submitted his memorial, the States General had not yet passed a resolution upon the matter. The province of Holland declared that the United Provinces had for more than a century followed the principle, laid down in several regulations, of not deciding whether those who had taken vessels at sea were entitled to do so or not. Such an action must be left to the proper judges. Still the Republic would not give shelter to captors, other than Dutch, and their prizes, except in cases of emergency, as during bad weather, etc. Jones and his vessels must therefore leave Dutch waters as soon as they were able to sail. No ammunition or ship materials were to be delivered to him, except what he needed for reaching the open sea and the next foreign harbor.[4]

This decision was, in general, adopted by the States General, but did not meet with the approval of Sir Joseph Yorke. He addressed a still more urgent note to the States General. The ambassador based his demand for the restitution of the "Serapis" and "Scarborough" and the release of their crews on the treaty of Breda in 1667, confirmed by that of 1716 and also by those concluded later. According to the regulations the captains of foreign war

[1] Yorke to Weymouth, October 15, 1779 (Sparks MSS., LXXII).
[2] Colenbrander, Patriottentijd, I, 165; Griffis, Brave Little Holland, 231.
[3] Yorke to Weymouth, October 19, 1779 (Sparks MSS., LXXII).
[4] Extract, Resolutions, Holland and Westfriesland, October 21, 1779 (Sparks Dutch Papers).

vessels, when entering Dutch waters, had to show their commissions. If these were found illegal—that is, if they were not issued by a sovereign power—the captains were to be regarded as pirates.[1] To his government Yorke reported the following:—

"As well to the Prince as to the Ministers of the Republic, I proved the very great moderation and forbearance on the part of His Majesty who had given more than time sufficient to force this little squadron to sea, or to the Court of Versailles to produce a legal authority on the part of His Most Christian Majesty for their acts of hostility against Great Britain; that as neither of these events had come into our aid, it was not possible with honor, or with regard to other friendly powers, to abstain any longer from demanding what we were entitled to by the Law of Nations and by Treaty."

The ambassador added that he was displeased with the evasive answer of the States General to his previous memorial, and that he had therefore delivered a new note to the president of the States General, after showing it to the Grand Pensionary.[2] The resolution of the States General concerning Yorke's new memorial resulted in a refusal to restore the vessels. The United Provinces, they declared, would adhere to their old principle not to decide whether the prizes were taken legally or not, but Jones would be told that he must leave Dutch waters.[3] The latter measure was contradicted by Amsterdam. Her deputies to the Assembly of the States of Holland and Westfriesland asserted that Jones could not be compelled to sail, since such a step would

[1] Extract, Resolutions of States General, October 29, 1779 (Sparks Dutch Papers; Bancroft MSS., America, Holland, and England).
[2] Yorke to Weymouth, October 29, 1779 (Sparks MSS., LXXII).
[3] Resolution of the States General, November 19, 1779 (Bancroft MSS., America, Holland, and England; Sparks MSS., CIII).
At this time ugly attacks—probably instigated by the English party—were made against Jones in Dutch newspapers. He was described as a "rough, unpolished sailor" and a "man of little understanding and no morals or sensibility." Friends of the American cause (de Neufville, Dumas, van der Capellen) intended to defend Jones by publishing certain papers of the latter concerning the restoring of the Selkirk plate (Wharton, II, 599) in which his noble character was revealed, but the captain refused his permission (Neufville to van der Capellen, November 9, 1779; van der Capellen to Jones, without date; Jones to van der Capellen, November 29, 1779, in Beaufort, Brieven van der Capellen, 150–153).

be contrary to the resolution of the States General of November 3, 1756, which provided that "Commissie vaarders" —vessels possessing proper commissions—would be admitted to Dutch waters.[1] The English ambassador reported indignantly to his government that his memorial was not complied with. The States General, he said, passed over treaties and had recourse to interior regulations, no matter when taken and under what circumstances.[2]

The matter took now a sudden turn in another direction, foreseen, however, by many. The States General received a letter from the Prince of Orange, stating that he had, in conformity with their resolution of November 19, given orders to Vice-Admiral Reynst to urge Jones politely, but firmly, to depart from the Texel. Reynst had sent Captain van Overmeer on board the "Serapis" to execute the order. Overmeer found, however, that the "Serapis" was not commanded by Jones any longer, but by a French captain, Cotineau de Corgelin, who held possession of it in the name of the King of France. The same was the case with the other English vessel, and Reynst had therefore found himself unable to carry out his order, since the vessels were not commanded by Jones.[3] The French ambassador at the Hague subsequently pretended that Jones had a French commission.[4] Yorke was quite pleased with this development of the Jones incident, considering it a victory over the French party in the United Provinces. He wrote to the Foreign Office in London:—

"I cannot help observing upon the turn this affair has taken, that it has not ended so disagreeably for us as it appeared likely to do at first. The arrival of the squadron under an American flag was meant to procure some kind of avowal of American Independence, whereas the Court of Versailles has at least been obliged to cover it

[1] Extract, Resolutions of Holland and Westfriesland, November 13 and 17, 1779 (Sparks Dutch Papers; Nieuwe Nederlandsche Jaerboeken, 1779, p. 1365).

[2] Yorke to Stormont, November 23, 1779 (Sparks MSS., LXXII).

[3] Extract, Resolution of States General, November 26, 1779 (Sparks Dutch Papers).

[4] Yorke to Stormont, December 14, 1779 (Sparks MSS., LXXII).

with a French mask.[1] The change in its appearance will probably too, enable me to effectuate an exchange of prisoners, which was impracticable in its former shape; and, lastly, the best part of the nation is at the bottom highly offended at the contempt it is treated with, when it was so easy to have prevented it at the beginning."[2]

An interesting light is thrown upon the affair by a conversation between Captain Cotineau and Reynst which was submitted in writing to the States General by the stadtholder. Cotineau had said that he was to be regarded as a French officer though Jones had chosen to show an American flag. The ships had been armed in France and Louis XVI had sent on board one lieutenant-colonel with 150 men. The "Comtesse de Scarborough" had been taken by Cotineau himself, and he had declared to the prisoners from the beginning that they were French prisoners of war. When Reynst showed surprise that the vessels had been flying two flags, using sometimes one and sometimes the other, Cotineau answered that Dr. Franklin in Paris had given permission to use the North American flag. The French flag had been shown only from December 7. Reynst had tried in vain to obtain a copy of the French commission to John Paul Jones, and it was suspected that it had not yet arrived.[3] In fact, however, Jones refused emphatically to

[1] Yorke was right. Jones had no French commission. He wrote to van der Capellen, "I never bore nor acted under any other commission than that I have received from the Congress of the United States of America" (November 29, 1779, in Beaufort, Brieven van der Capellen, 153).

[2] Yorke to Stormont, December 14, 1779 (Sparks MSS., LXXII).

[3] Extract, Resolution of States General, December 22, 1779 (Sparks Dutch Papers).

In conformity with an advice from the Duc de la Vauguyon, Jones had told the Dutch commandant at the Texel that his French commission had not been found among his papers since the loss of the "Bon Homme Richard," and he feared that it had gone to the bottom in that ship; but, if it was really lost, it would be an easy matter to procure a duplicate of it from France (Jones to Vauguyon, November 4, 1779, in Wharton, III, 398).

Of the different stages of the Jones incident the Prussian envoy at the Hague, Thulemeier, sent detailed accounts to Frederick the Great (Bancroft MSS., Prussia and Holland, under dates 1779, October 8, 12, 15, 19, 26, 29; November 2, 16, 19, 23, 30; December 14, 17, 28, 31).

accept the French commission. The French naval agent at Amsterdam, de Livoncourt, wrote to him:—

"Meanwhile I can make no more entreaty, if you persist in not using the commission which I was charged to send you. Reflect that all the French here in the service of the king have strongly at heart to maintain the republic in sentiments favorable to the allies of his majesty. It is in conformity with these views, and for the good of the common cause, and only for this transient object, that the commission, for the origin of which you imagine a thousand ill-natured motives and which finally you refuse to accept, has been addressed to you.

"You know all that I have had the honor to say to you on this subject has been as well for your personal quiet as for the honor and satisfaction of the common allies."[1]

Jones, flying only the American colors, and not showing the French flag on the "Alliance," which he now commanded, nor producing any French commission, was requested by Vice-Admiral Reynst to inform him whether the "Alliance" was to be considered a French or an American vessel. In the first case Jones would be expected to show the French commission, to hoist the French flag and pendant, and to confirm it with a salute from his guns. In the second case Jones was asked not to neglect any opportunity to depart according to the orders of the States General.[2] The American answered that he had no orders to hoist the flag of France. He could not display any other than the American colors, unless he received orders for that purpose from Dr. Franklin. Besides, he was ready to sail whenever the pilot was ready to conduct the "Alliance" to sea.[3] On December 27 Jones put to sea,[4] having stayed at the Texel almost three months. This long delay, in spite of the many entreaties of the Dutch government to depart, was necessitated partly by indispensable repairs of the vessels under his command, and partly by the vigilance of a superior number of English war vessels at the exits of the roads at the Texel. For Great Britain the stay of John

[1] December 17, 1779 (Wharton, III, 431).
[2] Reynst to Jones, December 17, 1779 (ibid., III, 430).
[3] Jones to Reynst, same date (ibid., III, 430).
[4] Jones to Dumas, December 27, 1779 (ibid., III, 450).

Paul Jones in Dutch waters furnished subsequently a welcome pretext for the reproach to the United Provinces that they protected American pirates in their ports.[1]

[1] This discussion is somewhat ahead of the chronological order. Chapter III is devoted to the British accusations that the Dutch, directly or indirectly, supported the cause of America. Since the Jones episode formed one of the chief complaints of England in this respect, it seemed best to mention it here. Below, p. 129.

CHAPTER IV.

Early Relations Between the two Republics.

The attempts of American representatives to raise a loan in the Netherlands formed part of the general financial policy of the Americans. The latter expected to borrow from Europe funds with which to meet the momentary exigencies of their newly created commonwealth. Therefore the Dutch loan must be considered in connection with other foreign loans. The majority in Congress, led by Richard Henry Lee and Samuel Adams, arranged a series of missions to European courts for the purpose of borrowing money, though those courts had given no intimation that they would receive American envoys. In several cases it was even more or less evident in advance that the reception would be refused. Only in one instance was it known beforehand that American representatives were welcome. France, contemplating joining the war against England, had intimated that envoys from North America would be received, at least in a private capacity. First Silas Deane, then Benjamin Franklin, and finally Arthur Lee was sent to France,[1] and all were well received by the French court.[2]

Fearing that premature complications with England would result from assisting the American colonies openly, France decided to do so clandestinely. The famous dramatist and secret agent of the French court, Beaumarchais, established a mercantile house in Paris under the fictitious name of Roderique Hortalez and Company for the special purpose of buying military stores and selling them to the Americans. As headquarters of the firm the "Hotel de Holland" was selected, a building erected under the reign

[1] Above, p. 123.
[2] Wharton, I, 291.

of Louis XIV by the Dutch Republic as the residence of its minister at the French court, but vacant now for many years.[1] Both Deane and Arthur Lee negotiated successfully with Beaumarchais, with whom they made an agreement for furnishing munitions of war to the American colonies. The French government supported Beaumarchais by paying to him one million livres for the use of the Americans and providing him secretly with ammunition from the royal arsenals. France urged the court of Spain, with which she was allied by the so-called family compact, also to assist Beaumarchais with one million livres for the same purpose. This sum was paid to him through the Comte de Vergennes. The Americans were to pay to Hortalez and Company American produce in return, but the consignments of the colonies to France consisting of tobacco, indigo, etc., soon almost ceased, after such shipments had been repeatedly intercepted by the English, and after the rumor had spread in America that the whole transaction was a mere pretext of France for the maintenance of nominal neutrality.[2] Beaumarchais then received another million from the King of France.[3] The subsidies, thus furnished by France to the American colonies through Beaumarchais, became later the subject of controversies between the latter and the United States, the question being whether the Americans ought to pay in full for the goods which they received from him, or whether the money given to the French agent by his government was intended as gratuitous assistance to the United States.[4]

Already at this early stage of the Revolution Americans contemplated a loan in the United Provinces. On November 2, 1776, Carmichael wrote from Amsterdam[5] to the com-

[1] Wharton, I, 370.
[2] Ibid., I, 374.
[3] Bayley, National Loans of the United States, 6.
[4] Wharton, I, 381 ff.; Bayley, National Loans of the United States, 5 ff.; Dewey, Financial History of the United States, 47.
[5] William Carmichael of Maryland happened to be in Europe at the beginning of the American Revolution. He was in Paris when Silas Deane arrived there as commercial and political agent from

mittee of secret correspondence that he had endeavored to induce Dutch merchants to invest in direct commerce with America. He had also tried to find out the sentiments of the people of the United Provinces in general respecting the Americans, and to learn whether, in case of necessity, the United States would be able to negotiate a loan, and, on the other hand, whether England would be able to obtain further credit. Arriving but two days after the accounts had reached Amsterdam of the misfortune of Long Island, William Carmichael found many even of the sanguine friends of America dejected and the partisans of England almost in a frenzy of joy. In this disposition, he said, it was easy to see that no hopes could be entertained of engaging merchants in direct trade. He found that they had the greatest inclination to serve the Americans, and at the same time to help themselves, for no people saw their interest clearer; but their fears that America might be subdued, the confident assertions of the friends of England confirming these apprehensions, the prodigious sums they had in the English funds, with this unlucky business at New York, all conspired to prevent direct speculations.[1] An American loan was, therefore, in Carmichael's opinion, not yet practicable in the Provinces, but he was confident that, in case the final success of the American colonies should become evident, or either France or Spain should recognize American independence, funds might be had from the Dutch. As soon as the lenders should see that the first payments of interest were made punctually, plenty of money would be offered by Dutch houses. As security for such loans he proposed the issue of bonds similar to those current in the

the United States, and lived with him for some time, aiding him in his official business. When the Prussian minister in Paris suggested that Frederick the Great would like to be informed on American commerce by a competent American citizen, Deane proposed to Carmichael the undertaking of that mission. Carmichael accepted and went to Berlin by way of Amsterdam (Wharton, I, 577). It was then that he studied the political situation in the Netherlands and tried to further the American cause there.

[1] Wharton, II, 185.

Netherlands, and suggested that they should be lodged in a public bank in Europe.

Such sounding of Dutch financial circles could not long remain unknown to the British ambassador at the Hague. He reported to his government that, according to rumors, his "bastard brother ambassador" Deane was at Amsterdam, endeavoring to borrow money for Congress, and that the American commissioner even had proposals drawn up for that purpose. Yorke added that he could not conceive of the Dutch lending a stiver to the Americans, because the colonies were not in a position to give any security. "This," he concluded, "is but a poor bait to take in old sharpers."[1]

While there was no prospect yet of raising a loan in the United Provinces, the American commissioners were more successful in France. The French government, not yet ready to join the war, when asked by the commissioners[2] to provide the Americans with ships, men, and warlike stores, declined, since such aid could not be rendered without becoming known to the English. A loan, however, was less dangerous in this respect, there being little difficulty in keeping monetary transactions a secret. In the beginning of the year 1777 Louis XVI granted, therefore, two million livres[3] to the Americans, demanding no promise of repayment but requiring absolute silence.[4] This made the com-

[1] Yorke to W. Eden, November 15, 1776 (Sparks MSS., LXXII).
[2] Bolles, Financial History of the United States, 227.
[3] Five French livres equal about one American dollar.
[4] According to Bayley (National Loans, 10, 11), this loan was not obtained from the French government directly, but from the Farmers General, to whom Franklin and Deane were referred, because that private corporation, "engaged in the collection of the national revenue of France, might loan public moneys, if encouraged to do so by the government, without causing any diplomatic complications." (The Farmers General leased the public revenues, paying to the government a certain fixed sum.) The contract dated March 24, 1777, was signed by Franklin, Deane, and a representative of the Farmers General. In contradiction to this, Bolles (Financial History, 228) states that it was proposed to obtain money from the Farmers General, but as it was difficult to settle all the terms, the Crown granted the money. De Knight-Tillman, History of the Currency of the Country and of the Loans of the United States, 17.

missioners hopeful of raising enough money for paying the interest upon $20,000,000 of paper money issued by Congress. They advised Congress to draw on them for sums equal to the interest of what they had borrowed, when such interest should become due. Before the end of the year the commissioners obtained another loan from France, amounting this time to three million livres.[1]

Meanwhile the relations between the American agents in Paris and the Netherlands were kept up. Dumas furnished addresses of Dutch firms, with whom the Americans could deal, and promised to send more in future,[2] though there was no better prospect yet for a loan. It is interesting to observe that England's credit also was low at this period. Thulemeier, the Prussian envoy at the Hague, who had instructions to inform his master, Frederick the Great, about everything noteworthy, reported in January, 1778, that the credit of Great Britain was very precarious. This was due partly to the enormous number of business failures in London, but largely to the court of Versailles. The French government, he said, aimed at the ruin of the English credit by secretly buying British funds and selling them at a considerable loss.[3]

In the United Provinces there was especially one friend and admirer of the United States who made an ardent attempt to obtain a loan in his country for the Americans. This was Joan Derk van der Capellen.[4] He explained to the Dutch capitalists that the credit of America, based upon a country rich in products, was supported by a really republican government. This credit, he argued, was infinitely more secure than that of England, which suffered from an enormous national debt and depended only on a commerce which had become very uncertain, while its sole guarantee was a despotic and awkward government. Van

[1] Bolles, Financial History, 228–229.
[2] Dumas to A. Lee, September 23, 1777 (Lee MSS., Library of Harvard University, III).
[3] Thulemeier to Frederick II, January 23, 1778 (Bancroft MSS., Prussia and Holland).
[4] Above, pp. 23, 31.

der Capellen was, however, not yet able to collect a sum large enough to be offered to the Americans. He suggested, therefore, to Franklin a method by which the Dutch might be induced to invest their money in American securities. Congress, he said, should offer propositions which would be advantageous enough to enable the Dutch to withdraw their money from England without loss in spite of the low rates of the British funds. For this purpose he recommended a fundamental law, to be passed by Congress, to the effect that the interest of the loan should not be reduced unless a restitution of the capital was offered. The interest must be high and be offered for a number of years. This, the Dutch statesman thought, would be the most efficient and most humane way of bringing the war to a speedy end in favor of the Americans. It would, at the same time, serve to separate his country gradually from Great Britain, and to attach it more and more to the interests of the United States.[1] The American commissioners in Paris conceived now the plan of opening a loan officially in the United Provinces. In May they wrote, "We mean to apply for the loan desired to the moneyed men of Holland."[2] Still, though the disposition in Holland seemed to be favorable to the American cause, they apprehended that it was not yet warm enough to produce any decided success. This would only be possible when Great Britain appeared more enfeebled. Dumas published in the United Provinces an essay by Arthur Lee, which he hoped would have some effect.[3] It explained that the success of the American arms would reestablish American commerce upon its ancient free footing. Since the Netherlands were thus to profit by the victory of the United States, the Americans looked chiefly to the United Provinces for support. The memorial then continued:—

[1] Van der Capellen to Franklin, April 28, 1778 (Beaufort, Brieven van der Capellen, 64–65).
[2] A. Lee to the Committee of Foreign Affairs, May 23, 1778 (Wharton, II, 609).
[3] A. Lee to the Committee of Foreign Affairs, June 1, 1778 (ibid., II, 603).

"The extraordinary remittances which the people of America have made to the merchants of Great Britain since the commencement of this dispute is a proof of their honor and good faith; so much more safe and advantageous is it to trust money with a young, industrious, thriving people, than with an old nation overwhelmed with debt, abandoned to extravagance, and immersed in luxury. By maintaining the independence of America a new avenue will be opened for the employment of money, where landed property, as yet untouched by mortgage or other incumbrances, will answer for the principal, and the industry of a young and uninvolved people would insure the regular payment of interest. The money-holder would in that case be relieved from the continual fears and apprehensions which every agitation of the English stocks perpetually excites. He might count his profits without anxiety, and plan his moneyed transactions with certainty."[1]

The commissioners shortly afterwards informed their government that they were going to send to the United Provinces the proposals for a loan as soon as Franklin, who was entrusted with forming the plan, should have the proposed bills printed and the business prepared for execution.[2] More than a month and a half later these preparations were not yet finished. "We are signing the notes for the loan in Holland, which is a work of time," Arthur Lee wrote to his superiors.[3]

While the American commissioners were thus working for a loan in the Netherlands, they continued to ask for further assistance from France. Their application to the French government for the privilege of borrowing two million sterling from private sources, in order to redeem so many of the bills of credit in the United States as would be sufficient to restore the remainder to their original value, was not complied with.[4] A further request was made by Franklin to the court at Versailles for a quarterly payment of three quarters of a million livres, whereupon the king consented to advance 750,000 livres more.[5]

The main reason why it was so difficult for the United

[1] A. Lee's Memorial for Holland (Wharton, II, 545).
[2] A. Lee to the Committee of Foreign Affairs, June 9, 1778 (ibid., II, 609).
[3] A. Lee to the Committee of Correspondence, July 28, 1778 (ibid., II, 671).
[4] Bolles, Financial History, 230.
[5] Ibid., 234; Gerard to the President of Congress, February 9, 1779 (Wharton, III, 41).

States to obtain assistance in Europe was that their credit was poor. Another was that the principal European nations were arming for war, and all had to borrow money, some offering rates of interest considerably higher than those proposed by the Americans. There remained, therefore, only two motives for lending money to the United States: either benevolence or the desire to humiliate Great Britain. Since this condition of the European money-market continued for rather a long period, there was not much hope left of obtaining loans from individuals. It could only be expected from governments.[1] The American commissioners in France were almost in despair. "Our currency," wrote John Adams in the fall of 1778, "can not engage our attention too much. And the more we think of it, the more we shall be convinced that taxation, deep and broad taxation, is the only sure and lasting remedy. Loans in Europe will be very difficult to obtain. The powers at war, or at the eve of war, have such vast demands, and offer terms so much better than ours, that nothing but sheer benevolence to our cause can induce any person to lend us. Besides, a large foreign debt would be a greater evil, for what I know, than a paper currency."[2] Arthur Lee expressed himself similarly:—

"Congress must not trust to the success of a loan, which, for the following reasons, I apprehend will be found impracticable.

"The war in Germany supervening on that between us and Great Britain, and the preparations for it by France and Spain, have raised and multiplied the demand for money, so as to give the holders of it their choice and their price. The empress queen has engrossed every shilling in the Netherlands. England has drawn large sums from the Hollanders, who can not easily quit their former market. France is negotiating a loan of one hundred million livres, which will exhaust Geneva and Switzerland. The money-holders regard the lending their money at such a distance as Jacob did the sending Benjamin into Egypt, and it is time only will make them endure the thought of such a separation.

"These are the difficulties which the circumstances of things oppose to our scheme of a loan, and render the aid of some other operation necessary for sinking the superabundant paper."[3]

[1] Bolles, Financial History, 231.

[2] Adams to R. H. Lee, August 5, 1778 (Wharton, II, 677).

[3] A. Lee to the Committee of Foreign Affairs, August 21, 1778 (ibid., II, 691, 692).

The experience with their first loan in the United Provinces was not such as to make the commissioners hopeful. In a joint letter they informed Congress in September, 1778, that they had taken measures in Amsterdam for borrowing money of the Dutch.[1] These steps consisted in negotiating American obligations signed by the commissioners in Paris, their value being one thousand guilders each, bearing five per cent. interest and to be redeemed ten years after issue.[2] A certain number (about two hundred and eight) were lodged in the French house of Horneca, Fizeaux, and Company at Amsterdam.[3] These papers were not taken up at all. Van der Capellen suggested that the negotiations would be more successful if, instead of the obligations being signed by Franklin, Lee, and Adams, Congress, represented by its president and secretary, would do so under the official seal. The Dutch were accustomed to similar contracts with their states. Besides, Congress must promise expressly not to reduce the interest during the terms of the bonds. In his opinion ten years was too short a period, and he recommended extending it to twenty. Van der Capellen considered also very injurious to the American credit the false reports which were spread in the Netherlands by the English, and which could not be corrected by the friends of the American cause since the latter were not kept informed of the facts. He deemed it of the utmost importance that measures should be taken to furnish reports to the Dutch that were absolutely true, even in regard to the misfortunes of the Americans. The Dutch statesman then offered his services to make such news public. A description of the existing condition of the United States, the form of government in the separate states, the facility with which foreigners might settle there, the prices of the various qualities of land, together with a concise history of the war, and the cruelties committed by the English would, in his opinion, work

[1] Franklin, Lee, and Adams to the President of Congress, September 17, 1778 (Wharton, II, 722).
[2] Thulemeier to Frederick the Great, November 24, 1778 (Bancroft MSS., Prussia and Holland).
[3] Yorke to Suffolk, October 16, 1778 (Sparks MSS., LXXII).

wonders in a country where America was known only from the gazettes. Van der Capellen stated also that he had invested 20,000 French livres with the firm of Horneca and Fizeaux for American securities. He was convinced that it would be more advantageous to the American cause to procure one hundred thousand livres from fifty persons and from different parts of the country than to receive even a million from a single capitalist. He had interested a number of compatriots in the Dutch loan, when letters from London arrived, stating that the American people were dissatisfied with Congress and there were grave dissensions between the French and the Americans and also among the Americans themselves. The consequence was a general distrust in the success of the Revolution. Van der Capellen expressed his desire that Congress would find means to assure the Dutch that, whatever turn the war might take and of whatever nature the final peace with Great Britain might be, the capital and interest of the debts contracted during the struggle would be secure. Unless these apprehensions of the Dutch should be relieved, support for the American cause could not be expected in the United Provinces.[1]

At the beginning of 1779 there was yet no hope for a loan. "The prospect of a loan in Europe," wrote John Adams to Congress, "after every measure that has been or could be taken, I think it my duty to say frankly to Congress, is very unpromising. The causes of this are very obvious, and can not be removed; the state of our country itself and the course of exchange would be sufficient to discourage such a loan if there were no other obstruction, but there are many others. There are more borrowers in Europe than lenders; and the British loan itself will not be made this year at a less interest than seven and a half per cent." He saw no hope of relief but in taxation and economy. The people of the United States, in his opinion, must be destitute of sense as well as of virtue, if they would not be willing to

[1] Van der Capellen to Trumbull, December 7, 1778 (Beaufort, Brieven van der Capellen, 89–93).

pay the cost of their defence, since they had one powerful ally (France) and could expect others, while England was exhausted and had no ally at all.[1]

The loan in the United Provinces was a failure. Louis XVI, in order to encourage it, had consented to guarantee the interest of three million livres. Toward the end of May, 1779, however, the loan amounted scarcely to 80,000 florins. The work of the commissioners was greatly hampered by the efforts of the separate states of the United States to obtain loans in Europe, especially when their agents offered higher rates of interest than the representatives of Congress were able to propose.[2] "Running all over Europe, asking to borrow money," the states created such a belief in the distress and poverty of the country as to make it undesirable for foreigners to enter into close relations with the United States.[3]

In connection with the American attempts to effect a loan in the Netherlands, Stephen Sayre[4] (Arthur Lee's secretary) must be mentioned. According to Sir Joseph Yorke this "noted American agent" arrived at Amsterdam, but was received openly nowhere except at the house of Jean de Neufville. The ambassador stated that the purpose of Sayre's visit was "to find any enthusiasts dupes enough to advance money upon the security of lands in America."[5] These land schemes are of sufficient interest to be mentioned, as Sayre discussed them while at Amsterdam. Having travelled through a great part of Germany and the northern states of Europe, he was of opinion that many persons were waiting impatiently for the moment of safety, that is, the certainty of the independence of the United States, to embark for America in order to settle there. Others were anxious to make investments in America, like

[1] John Adams to Jay, President of Congress, February 27, 1779 (Wharton, III, 70).
[2] Franklin to the Committee of Foreign Affairs, May 26, 1779 (ibid., III, 188–192).
[3] Bolles, Financial History, 236.
[4] Above, p. 61.
[5] Yorke to Lord Weymouth, May 21, 1779 (Sparks MSS., LXXII).

de Gorne, the minister of state of Frederick the Great. Congress should therefore appropriate a district of land near some of the middle states in America, containing three or more degrees of latitude and longitude, to be set apart as security for the subscribers to American loans. This district should be divided into square lots of one hundred acres each of cultivable land, numbered and registered in the public offices of the states. Each subscriber, according to this scheme, would be entitled to the first number unoccupied, as he applied for location. The inhabitants of the district were to enjoy the privileges constitutionally belonging to the people of the other states. An interest of a certain per cent. would be paid to the subscribers until they had located their lands. The land certificates should be transferable, so that those who did not settle in America might be able to sell their shares. Sayre was of opinion that upon such a plan the agents of Congress would have no difficulty in borrowing large sums of money in the United Provinces, and at low interest, too, because America was offering such advantages as no other country could boast of, viz., that of giving landed security and unembarrassed choice of immediate possession. Besides, he thought, America would secure the sympathy and friendship of the United Provinces by such a loan.[1] Mr. Sayre's scheme seems to have been too fantastic ever to have been taken into serious consideration.

In July, 1779, van der Capellen noticed that the people of the Netherlands were beginning to see the dangerous position of England and to think more favorably of the American cause and the credit of the United States. He informed his friends in America accordingly and suggested that something should be done to profit by this change of public opinion.[2] He impressed on the Americans again that in order to strengthen the credit of the United States it would be necessary to make the Dutch better acquainted with American affairs and for that purpose to have a system of

[1] Sayre to van der Capellen, June 23, 1779 (Beaufort, Brieven van der Capellen, 154–156).

[2] Van der Capellen to Trumbull, July 6, 1779 (ibid., 109).

continuous and trustworthy intelligence established regarding the vicissitudes of the war. Van der Capellen expressed strong hopes that his efforts concerning the American loan might succeed. In the Netherlands there were many Roman Catholics and these were much in favor of the United States. A great number of them were residing in his province, of whom he knew many, and through them he expected to be able to influence others of their faith. It was now the right moment to act.[1]

These communications were received with much enthusiasm in the United States, and probably formed the principal cause for the subsequent appointment of Laurens, President of Congress, as special agent to the United Provinces.[2] The Dutch statesman worked indefatigably for the American cause, even publishing extracts from his correspondence with leading Americans (Trumbull and Livingston), and inducing friends and relatives, like his cousin, Baron van der Capellen tot de Marsch, to contribute to the American loan.[3] But this experiment, also, was a failure.

For a moment, a brighter prospect was opened when Mr. Neufville, a Dutch banker (not the same with whom John Adams negotiated later), offered to Franklin in the spring of 1779 large sums, provided the business should be taken from the house then employed for placing the American bonds with the United Provinces. Unfortunately he proved to be an adventurer. At first he asked that "all the estates, real and personal" in the thirteen United States should be mortgaged to him, also that a fifth of the capital sum borrowed should every year for five years be laid out in commodities and sent to Holland, consigned to him, to remain in his hands as security for punctual payments, till the time stipulated for final payment should be completed. As another condition he proposed that all vessels of merchandise coming from America to Europe should be consigned

[1] Van der Capellen to Livingston, July 16, 1779 (Beaufort, Brieven van der Capellen, 113–115).
[2] Livingston to van der Capellen, March 15, 1780 (ibid., 214).
[3] Van der Capellen to Livingston (ibid., 112).

to him or his correspondents. Franklin rejected these conditions with indignation, and Neufville then came down to the terms employed by the other house. No complaints having been preferred against the latter, Franklin was not in favor of a change, especially as he had commenced to doubt Neufville's reliability. Franklin therefore answered evasively that if the banker could procure a list of subscribers amounting to about the promised sum, Neufville's proposition would be considered. Neufville, in contradiction to his pretensions, was not able to furnish such a list, but, instead, sent Franklin a new set of extravagant propositions. The American commissioner then dropped all correspondence with him. After this experience, Franklin wrote in the fall of 1779: "The truth is, I have no expectations from Holland while interest received there from other nations is so high and our credit there so low; while particular American States offer higher interest than the Congress, and even our offering to raise our interest tends to sink our credit. My sole dependence is now upon this court [France]."[1] But the year 1779 was almost ended, and no funds had been secured from France for more than a year. No wonder that the American commissioners seemed to have no hope at all in a foreign loan at this time. One of them wrote:—

"I perceive by the journals that a committee is appointed for framing a plan of a foreign loan. It is my duty to say that there is not the least probability, in the present situation of things, of obtaining any adequate loan in Europe, and to beseech Congress not to let the vain expectation of that divert their attention from trying every resource at home. It is necessary that the impressions to our discredit which have arisen from the unsuccessful attempts that have been already made should be allowed to wear off and some favorable event occur, such as the enemy being obliged to draw off their troops, before it will be possible to succeed in such a plan. In the mean time the repetition of ineffectual attempts will only debase your credit more, and especially if they are accompanied with the offer of more than ordinary interest, which ever augments the suspicion of the insecurity of the principal and that the borrowers are themselves conscious of their insufficiency."[2]

[1] Franklin to Jay, October 4, 1779 (Wharton, III, 361, 362); Bolles, Financial History, 236–238.

[2] Arthur Lee to the Committee of Foreign Affairs, November 6, 1779 (Wharton, III, 401–402); Bolles, Financial History, 239–240.

Another effort of the American commissioners to draw the two republics nearer together should not be overlooked, namely, the proposal of a treaty of amity and commerce. Already in the spring of 1777 Vauguyon had informed his government of a suggestion that had been made to Mr. van Berkenrode, the Dutch envoy to the court of Versailles, by Franklin and Deane. These gentlemen had solicited the States General to favor the commerce of the United States, which would give them great advantages. The commissioners, according to Vauguyon, had offered to go to the Netherlands in order to negotiate, or, in case this should not be considered convenient, they were willing to treat with a deputy of the United Provinces in Paris. The French ambassador had also learned that the Dutch, after many deliberations, had decided to authorize Berkenrode to make an answer which, without rejecting the offer of the Americans, would not betray any eagerness to accept it.[1] About a year later, rumors were spread that Franklin was expected in Holland to negotiate a treaty of commerce. These reports, Sir Joseph Yorke observed, made only little impression in the Netherlands, but served to show the temper of the times.[2]

On February 6, 1778, France openly espoused the part of the United States, in concluding a treaty with them. It was stipulated that, in case Great Britain should declare war upon France, neither of the contracting parties should make peace separately, and that England must recognize the independence of her former American colonies before a general peace might be thought of. The treaty was ostensibly commercial. On March 18, Béranger, the French chargé d'affaires at the Hague, informed the ministers of Holland and the president of the States General, on behalf of his government, of the conclusion of the convention, causing thereby a great sensation.[3] The exact terms of the treaty, however, were not yet made known to the Republic, no copy

[1] Vauguyon to Vergennes, May 30, 1777 (Sparks MSS., LXXXIII).
[2] Yorke to Suffolk, April 3, 1778 (Sparks MSS., LXXII).
[3] Thulemeier to Frederick II, March 20, 1778 (Bancroft MSS., Prussia and Holland).

of it being transmitted. Dumas, after a conference with the Grand Pensionary of Holland, asked the American commissioners in Paris to send one for the Grand Pensionary, from which another might be drawn for the regency of Amsterdam.[1] Franklin thereupon sent a copy of the treaty to the American agent, but Vauguyon was instructed by the French minister of foreign affairs, who had conferred with the American commissioners on the subject, to prevent a formal communication until express orders were sent to that effect. The ambassador was, however, authorized to allow the Grand Pensionary of Holland and the regency of Amsterdam to read the treaty, and to assure them, as he had done before,[2] that no exclusive commercial advantages had been stipulated for France. Vauguyon was also charged to inform the Dutch that no free ports had been accorded to the Americans in France except for commodities of their own growth, such as tobacco, which were not introduced into France from the Netherlands. For everything else the former English colonies would be subjected to the same rules and rights as other privileged nations, and these provisions could therefore in no way be offensive to the United Provinces.[3] Sir Joseph Yorke, who appears not to have known of the confidential proceedings just mentioned, was at a loss to know why the treaty had not been communicated to the Republic, and suspected the reason to be that the French had granted favors to the Americans which they withheld from the Dutch, especially regarding free ports.[4] In the autumn of 1778, when the treaty between France and America was no longer a secret, Vauguyon received two copies of it from his government for communication to whomever he thought proper, but he was forbidden even then to deliver them to the Dutch ministers officially.[5] On October 22, a printed copy was handed to the Grand Pen-

[1] Dumas to the Commissioners in Paris, May 29, 1778 (Arthur Lee MSS., Harvard University).
[2] Yorke to Suffolk, March 27, 1778 (Sparks MSS., LXXII).
[3] Vergennes to Vauguyon, June 21, 1778 (ibid., LXXXIII).
[4] Yorke to Suffolk, July 20, 1778 (ibid., LXXII).
[5] Vergennes to Vauguyon, October 15, 1778 (ibid., LXXXIII).

sionary, who brought it to the knowledge of the States General. The latter discussed the matter secretly, but no official action was taken.[1]

Vauguyon secretly sounded Dutch politicians to see if they favored a convention between France, Spain and the Republic for the mutual protection of their commerce. The Netherlands were not yet ready to take such a step. The Grand Pensionary, van Bleiswijck, was much pleased with the proposition, but declared that he would not be able to win the Prince of Orange for it. France did not insist, and the Republic considered it now almost a favor to be left undisturbed in the enjoyment of neutrality. In truth, France had become aware of the fact that the United Provinces were more advantageous to her as a neutral power than as an ally. The Dutch navy was too weak to be of any real service, in case the Netherlands should join the war. On the other hand, their large commercial fleet would be of the greatest importance for France, as long as Dutch navigation remained undisturbed by the belligerents.[2] France therefore now left it entirely to the Americans to further their own cause in the United Provinces. On April 28, Franklin, Arthur Lee, and Deane addressed to the Grand Pensionary a letter, already known to and approved by the city of Amsterdam, in which they expressed the desire of Congress to enter into closer relations of friendship and commerce with the United Provinces. The commissioners requested that their letter be submitted to the States General.[3] The Grand Pensionary, however, did not comply with this wish. He knew that this proposition of the United

[1] Secret Resolution of the States General, October 28, 1778 (Bancroft MSS., America, Holland and England).

[2] Colenbrander, Patriottentijd, I, 127–130.

[3] Franklin, Lee, and Adams to Dumas, April 10, 1778 (Wharton, II, 546, 547).

Thulemeier reported to his royal master on May 26, 1778, that Franklin's letter proposing to the Grand Pensionary in the name of Congress "the conclusion of a treaty of commerce" had been accompanied with menaces in case of a refusal to recognize American independence. Three days later, however, he corrected this statement, asserting that no such menaces had been made (Bancroft MSS., Prussia and Holland).

States would not be accepted by the Dutch sovereign body, and, with the consent of the Prince of Orange, communicated it, confidentially, to the members of the States of Holland only. Each city, which had a vote in that province, was secretly provided with a copy.[1] It was thought that in this way every offence to the English government would be avoided.[2] So many persons knowing of the letter, it proved, however, impossible to conceal it long from the English ambassador. Yorke said that the very fact of the Dutch attempt to keep the communication of the American commissioners a secret showed the prevailing sentiments. Sir Joseph soon took occasion to confer with the Prince of Orange. "I was really sorry," the ambassador wrote of this conference, "for the Prince of Orange, who not being prepared by the Pensionary before I saw him, shewed more concern and embarrassment than I ever saw in him before, and convinced me that he had been led into it without feeling the consequence, and overpersuaded by others. I flatter myself not to have omitted anything which was proper to be said to him, which he received very kindly, and with strong assurances of attachment to the King, and personal regard to me: I left him with a strong and friendly recommendation not to suffer himself to be so trapped again."[3] Yorke had also a conversation on the subject with the Grand Pensionary, who was rather embarrassed with the ambassador's manner of "opening the business," the latter affecting "not to give credit to it." Van Bleiswijck admitted the fact of the American proposal and that he had communicated it to some members of Holland, not thinking it proper to keep such a letter entirely to himself. Yorke's question why he had not seen fit to inform the English government of this step, either through him or the Dutch envoy in London, was answered evasively. The Grand Pensionary said that he had not looked upon it as a matter of sufficient im-

[1] Colenbrander, Patriottentijd, I, 130; Blok, Geschiedenis van het Nederlandsche Volk, VI, 326.
[2] Young, History of the Netherlands, 627.
[3] Yorke to Suffolk, private, May 29, 1778 (Sparks MSS., LXXII).

portance, and that, besides, he was not properly authorized to communicate it officially to the English government. However, he did not hesitate then to send a copy of the letter to Yorke.[1]

While the government of the United Provinces was still too much in awe of Great Britain to enter into closer relations with the United States, the principal city, Amsterdam, engaged in negotiations with the Americans, thereby finally causing a breach with England and involving the Dutch Republic in a disastrous war, as will be seen in a later chapter.[2] In July, 1778, van Berckel, pensionary of Amsterdam, requested Dumas, the American agent, to express to the plenipotentiaries of the United States at Paris the gratitude and appreciation of the regency of Amsterdam for having been furnished with a copy of the French-American treaty. "May we hope that circumstances will permit us soon to give evidence of the high esteem we have for the new republic, clearly raised up by the help of Providence, while the spirit of despotism is subdued; and let us desire to make leagues of amity and commerce between the respective subjects which shall last even to the end of time. What troubles me is that it is not in our power to make the other members of the government do as we could wish; in which case the republic would be at once disposed to another course."[3] Dumas forwarded a copy of this letter to the commissioners in Paris and another one to Congress. He informed van Berckel soon afterwards of a letter which he had received from William Lee, then in Frankfort. The latter wrote that he was not disposed to make haste, especially in important affairs, but he could not help saying that there might be danger of the good people in Holland losing some advantages in commerce with America by their too great caution. He had reason to believe that the British ministry had

[1] Yorke to Suffolk, official, May 29, 1778 (Sparks MSS., LXXII); Thulemeier to Frederick II, July 7, 1778 (Bancroft MSS., Prussia and Holland).

[2] Below, pp. 152 ff.

[3] Van Berckel to Dumas, July 31, 1778 (Wharton, II, 674).

already sent orders to their commissioners to yield the point of independence, provided they should obtain some exclusive benefit in America.[1]

Afraid that the British commissioners, in their negotiations with the United States, might arrange some measures excluding the Dutch from American commerce, the burgomasters of Amsterdam sent a "Declaration" to Dumas. They expressed a desire to conclude a treaty of commerce and amity with the republic, provided Congress should not enter into engagements with the English which might prove "hurtful or prejudicial" to Dutch commerce, "directly or indirectly." Amsterdam not being able to negotiate a treaty independently of the States General, her ministers could think only of preparing such a convention. "It is plain," wrote van Berckel in his letter to Dumas on September 23, 1778, "that a treaty of commerce can not be concluded unless the principal commercial city of the republic gives its consent thereto, and that it can not give its consent without having examined the terms. This examination may as well precede as follow the acknowledgment of the independence of America by the English, in which case we should gain much time."[2] Already on the fourth of the

[1] Dumas to van Berckel, August 17, 1778 (Wharton, II, 687, 688).
[2] Wharton, II, 738, 739.

Since these negotiations of the city of Amsterdam with Congress caused much heated controversy afterwards (below, pp. 152 ff.) the wording of the "Declaration," which showed that the conclusion of a draft treaty with Congress originated principally in self-defence, will be of interest:—

"AMSTERDAM, September 23, 1778.

"The undersigned pensionary of the city of Amsterdam, has the honor to make known to those who are duly authorized by the Congress of the United States of America that he is empowered by the burgomasters of the aforementioned city to declare in their names that provided the said Congress do not enter into any engagement with the English commissioners which may be hurtful or prejudicial to the commerce of the republic of the United Provinces, directly or indirectly, the aforesaid burgomasters on their side will be entirely disposed, as far as depends on them, so to direct the course of affairs, that whenever the independence of the said United States of America shall be recognized by the English, a perpetual treaty of amity shall be concluded between this republic and the aforesaid United States, containing the most extensive reciprocal advantages in relation to the commerce of the subjects of the two powers.

same month a prominent merchant of Amsterdam, Jean de Neufville, who was much interested in American commerce had with the authorization of van Berckel formulated with William Lee at Aix-la-Chapelle a draft treaty which was to be considered only after the recognition of American independence by Great Britain.[1]

Lee, who had entered upon these negotiations without special authority from Congress, reported them in detail. After his arrival at Frankfort[2] he found an opportunity of negotiating a treaty of commerce with the province of Holland and West Friesland. He proceeded so far as to agree on the draft of a treaty with Mr. de Neufville and felt sure Congress would approve of it, as it contained all the substantially advantageous articles of the commercial treaty with France and some beneficial and agreeable additions. The negotiations had been conducted on both sides with great secrecy, which was absolutely necessary in order to procure final success with the United Provinces; for though the city of Amsterdam and the States of Holland paid about five sixths of the whole taxes for the support of the government, which consequently gave them very powerful weight and influence, yet they had no power by their constitution of entering into such a treaty without the concurrence of the other provinces. In some of the latter the Prince of Orange, who greatly favored England, had an overdue influence. This, Lee said, rendered secrecy of the

"The undersigned has the honor further to declare, that it is the will of said burgomasters that this declaration may be employed as shall be thought expedient, with the necessary precaution that it shall not come to the knowledge of those interested, to prevent, if possible, or at least to obstruct, the execution of a plan which has no other object than to promote the mutual happiness and the true interests of the two republics.

"E. T. Van Berckel."

[1] Blok, Geschiedenis, VI, 326.

[2] William Lee was charged to work for the American cause in Germany and Austria. It was while in the former country that he negotiated with de Neufville, who had been commissioned there by van Berckel. Probably the negotiation was held there in order to avoid suspicion, which could not have been prevented if the meeting had taken place in the United Provinces.

last importance, until the Patriots in Holland had secured success. Only then the business could be agitated in the States General, where it must be passed to have full authority.[1]

To Lee it appeared to be of no inconsiderable importance that he had obtained from the pensionary an engagement by which the States General would be prevented from taking any measures that might be injurious to the United States, provided America should not take any measures injurious to Holland. This engagement the pensionary alone was capable of complying with, because his single negative would be sufficient to prevent the States General from entering into any such measures, and consequently the states would be prevented from giving any aid to Great Britain against France.[2] The American commissioners in Paris, informed of Lee's transactions at Aix-la-Chapelle, did not approve of the provision that the treaty should be considered only after the recognition of American independence by Great Britain. "We would only remark that the mentioning it in the declaration as a thing necessary to precede the conclusion of such a treaty *'that the American independence should be acknowledged by the English'* is not understood by us, who conceive there is no more occasion for such an acknowledgment before a treaty with Holland than there was before our treaty with France. And we apprehend that if that acknowledgment were really necessary *or waited for,* England *might* endeavor to make an advantage of it in the future treaty of pacification to obtain for it some privileges in commerce perhaps exclusive of Holland. We wish, therefore, that idea to be laid aside, and that no further mention may be made to us of England in this business."[3]

France was aware of the fact that the principal men of

[1] W. Lee to Committee of Foreign Affairs, September 12, 1778 (Wharton, II, 715, 716).
[2] Same to same, October 15, 1778 (ibid., II, 787, 788).
[3] Franklin, Lee, and Adams to Dumas, October 16, 1778 (ibid., II, 799).

Amsterdam desired closer relations with the Americans, but she knew equally well that the States General would not join in these efforts before all fear of England's resentment had gone.[1] Yorke also was suspicious of secret negotiations between Amsterdam and the United States, though he did not know their nature and had in particular no knowledge of the draft treaty.[2] The American commissioners, however, did not overestimate the value of this secret agreement with the city of Amsterdam, and when Dumas hinted that some of the friends of the American cause in the Netherlands wished the commissioners to propose a treaty to the Dutch government, they answered that it would really be a great pleasure to them to be instrumental in cementing a union between the two republics of Holland and the United States by a treaty of amity and commerce similar to that lately concluded with France, or varying when circumstances might require it. But, having received no answer from the Grand Pensionary to a letter which they had written to him some months before, expressing their disposition toward such a good work, they apprehended that any further action of that kind on their part would not, at present, be agreeable; though they still would hold themselves ready to enter upon such a treaty when it should seem good to the States General.[3]

At first, the efforts of the Americans to have the States General accredit an American minister were also unsuccessful. As early as July 2 and 3, 1777, Congress, according to the minutes in the Secret Journal of Congress, had deliberated on the question of sending a representative to the States General at the Hague.[4] Almost a year later (April

[1] Vergennes to Vauguyon, September 13, 1778 (Sparks MSS., LXXXIII).

[2] Blok, Geschiedenis, VI, 326.

Yorke was satisfied to report to Lord Suffolk about a year later (July 10, 1779) that the States of Holland had taken no notice of the letter from the American agents in Paris to the Grand Pensionary (Sparks MSS., LXXII).

[3] Franklin, Lee, and Adams to Dumas, September 27, 1778 (Wharton, II, 747, 748).

[4] Wharton, II, 362, 363.

10, 1778), Franklin and Arthur Lee informed Dumas that John Adams, having shortly before arrived at Paris as the successor of Silas Deane, then recalled to the United States, had told them of the resolution of Congress to send a minister to the Netherlands. Though there was the best disposition toward the United Provinces in America, the measure, according to Adams' report, had been postponed for fear that the reception of an American envoy might inconvenience the States General at present, on account of the still existing connections with Great Britain.[1] That the apprehensions of Congress in this respect were well founded is evident from a letter of van der Capellen toward the close of the year in which he stated that the time seemed distant when the States General would receive an American minister. Except in Amsterdam the English party was still too strong in the United Provinces.[2]

It is interesting to note what John Adams said in this connection of the United Provinces and their relations to the United States. He held that the similitude of manners, of religion, and in some respects of constitution; the analogy between the means by which the United Provinces and the United States arrived at independence; but above all the attractions of commercial interest would infallibly draw them together. This connection would probably not show itself in a public manner before peace or a near prospect of peace, because too many motives of fear or interest placed the Hollanders in a dependence on England. Nevertheless, if the King of Prussia could be induced to take the Americans by the hand, his great influence in the United Provinces might contribute greatly to conciliate the friendship of the latter for the United States. Loans of money and the operations of commercial agents or societies would be the first threads of connection.

From the inquiries of the commissioners at Paris, Adams said further, it appeared that some money might be

[1] Wharton, II, 545, 546.
[2] Van der Capellen to Erkelens, December 7, 1778 (Beaufort, Brieven van der Capellen, 82).

borrowed in the United Provinces, and from the success of several enterprises by way of St. Eustatia it seemed that the trade between the two countries was likely to increase, and Congress might think it expedient to send a minister to the Hague. If they should, it would be proper to give him a discretionary power to produce his commission, or not to show it, as he should find his mission likely to succeed, and to give him full powers and clear instructions concerning the borrowing of money. As to the man himself, he should have consummate prudence with caution and discretion that would be proof against every trial.[1]

As late as February, 1780, Adams had to inform Congress that an American minister was much wished for in the United Provinces but that he might not yet be received publicly.[2] All efforts to bring about closer financial, commercial, or diplomatic relations between the two republics had up to this point completely failed.

[1] John Adams to the President of Congress, August 4, 1779 (Wharton, III, 281, 282).

[2] Same to same, February 27, 1780 (ibid., III, 526).

CHAPTER V.

English Aggressions and Dutch Defiance.

Since the last war between Great Britain and France[1] the United Provinces had gained a considerable part of that trade with France which was formerly in the hands of England. An extended commercial intercourse had been going on, ever since, between the Republic and French ports. Dutch vessels carried to France, together with many other goods, large cargoes of ship-building materials and naval munitions, which were purchased by the Dutch mostly from the northern countries. Corresponding quantities of merchandise were taken back in return, so that in fact this trade had become one of the principal branches of Dutch commerce.[2] While the carrying trade of the United Provinces had thus been steadily increasing, their naval strength as a belligerent power had since the great wars of the seventeenth century declined to the same degree.[3] How weak their position in this respect was may be judged from the number and state of their war vessels. In the sea battles of the eighteenth century ships of sixty and more cannon were considered most effective. Of such vessels England had 122, France 63, and Spain 62. The United Provinces possessed only 11, which, besides, were older than those of the other nations mentioned.[4] It was evident that after such neglect of her navy, the Republic in times of war would be at the mercy of her seafaring neighbors.

By a treaty concluded between England and the United Provinces in 1674 a novel principle had been introduced in the naval intercourse of the two countries, namely, that in

[1] 1756–1763.
[2] Cérisier, Observations Impartiales d'un Vrai Hollandois, p. 1.
[3] Fitzmaurice, Shelburne, 112.
[4] Colenbrander, Patriottentijd, I, 153.

case of war free ships made free goods. According to this stipulation either country was allowed to carry in its vessels —with exception of contraband of war—goods of a nation with which the other was at war. Naval provisions and materials for the construction of ships were not to be considered contraband by the contracting parties and were therefore exempt from seizure. All effects, however, found on an enemy's vessel, even if belonging to one of the two contracting countries, might be confiscated.[1]

While this treaty had rendered large profits to Great Britain whenever the Netherlands were at war, she was opposed to its stipulations in her own wars and especially since the beginning of her troubles with the American colonies. "I took care," said Yorke after an interview with the ministers of Holland in 1776, "to be very particular about the inadmissibility of any claim to the abused stipulation of *free ships, free goods* in the Treaty of 1674," and he added with satisfaction that both the Grand Pensionary and the griffier had admitted that the treaty could not with justice be pleaded in cases of rebellion.[2]

These remarks regarding the commercial and naval relations of the United Provinces with France on the one hand and with England on the other will show the great influence which the events described in this chapter had on the American Revolution. France, after her alliance with the United States, could give effective assistance to the latter only by having at her disposal a powerful fleet of war vessels. A ready and large supply of ship materials and naval munitions was required to strengthen her naval power. It was only natural that the United Provinces should continue to furnish these supplies, since England, still bound by the treaty of 1674, was not expected to be able to object to it. Great Britain, however, confident in her naval superiority, set aside

[1] Cérisier, Observations Impartiales, 33; Fitzmaurice, Shelburne, 112.

[2] Yorke to Suffolk, August 6, 1776 (Sparks MSS., LXXII). This report was made on the occasion of the restoration of the Dutch ship "Judith Aletta" by a sentence of the English Court of Admiralty.

her treaty obligations and used every means to intervene in the commercial relations between France and the Netherlands.

Already in the beginning of the American Revolution frequent searches by the English of vessels coming from Dutch ports aroused deep indignation and apprehension among the merchants of Amsterdam and Rotterdam. In the spring of 1777, the rumor prevailed that the British authorities had issued orders to search all vessels leaving the ports of the United Provinces.[1] Later in the year the English began to take Dutch vessels not only in Europe, but also in the West Indies,[2] which measure brought forth a clamor from the merchants of Amsterdam for the protection of their commerce and an official complaint from the Republic presented by Count Welderen to the court of St. James.[3] A convoy to the West Indies was granted by the States General in November, much to the disappointment and dissatisfaction of Yorke,[4] who must have seen in this step, proposed by the States of Holland and sanctioned by the States General, an alarming proof of the weakening of the English party in the United Provinces. The citizens of Amsterdam had gained a decided victory in this matter, and, anxious to increase their influence still more, desired to be represented at the court of St. James by a diplomat of their own choice. Count Welderen, they said, did not show enough fervor in supporting their interests, and they suggested to the States General the sending of an ambassador chosen from among the magistrates of Amsterdam. The petition, however, was not considered, and Welderen remained in his official posi-

[1] Vauguyon to Vergennes, April 19, 1777 (Sparks MSS., LXXXII).
[2] Dumas to the Committee on Foreign Affairs, August 22, 1777 (Wharton, II, 378).
[3] Yorke to Suffolk, private, September 24, 1777 (Sparks MSS., LXXII); Dumas to the Committee on Foreign Affairs, October 14, 1777 (Wharton, II, 408).
[4] Resolutions of the States General, November 3, 1777 (Sparks MSS., CIII); Yorke to Suffolk, November 7 and 19, 1777 (Sparks MSS., LXXII).
The convoy sailed in December (above, p. 58).

tion in London.[1] Dumas, in discussing the political situation in the Republic, said he had been told by the pensionary that the United Provinces owed the conservation of their liberty to the noble resistance of the United States, because the English were trying to establish despotism in the Republic. Their faction, he proceeded, was defeated now together with its principal supporter, Sir Joseph Yorke, whose influence, he thought, was much reduced.[2] It is not surprising that under these circumstances the English party, and especially the British ambassador, were constantly apprehending that the Dutch might not remain neutral. Yorke pretended to have news from Paris to that effect.[3] The Prussian envoy at the Hague also informed his king that after the rupture between France and England, the United Provinces, it was generally feared, would only with difficulty be able to remain neutral.[4] England would probably claim the help stipulated by treaties, but the party of neutrality would be victorious, since the actions of Great Britain had not been such as to make new friends in the United Provinces or to strengthen their old ones there.[5]

When matters between Great Britain and France grew more and more serious, the former began to look for aid to the United Provinces. The state of the Dutch military as well as naval forces was, however, so deplorably bad that direct assistance could hardly be expected. Yorke did his best to induce the Prince of Orange to have effective measures taken for the augmentation of the Dutch army. William V, a willing tool in the hands of the English, was found, also on this occasion, sincerely attached to George III and the cause of Great Britain. The prince's efforts,

[1] Thulemeier to Frederick II, January 23, 1778 (Bancroft MSS., Prussia and Holland).

[2] Dumas to the American Commissioners, January 23, 1778 (Arthur Lee MSS., Harvard University).

[3] Yorke to Suffolk, February 10, 1778 (Sparks MSS., LXXII).

[4] Thulemeier to Frederick II, March 27, 1778 (Bancroft MSS., Prussia and Holland).

[5] Same to same, March 31, 1778 (ibid.).

however, threatened to be nullified by the stubborn resistance of Amsterdam.[1]

Yorke received stricter instructions for his conduct in this case. The king, he was told, had seen with great concern how little prospect there was for the adoption of the Prince of Orange's proposals regarding the augmentation of the Dutch forces. Since the independence of the Republic depended on such a measure, the ambassador would be sensible of the necessity of putting her forces on a respectable footing at the present moment. He was asked to consider that the propriety and utility of enforcing every argument possible to encourage the stadtholder and the Dutch ministers for this object must be obvious. The States General could not consider their own defenceless state as consistent with those maxims of prudence and sound policy which brought the Republic to the degree of prosperity and wealth which it enjoyed. The letter then came more to the point, suggesting that in the war between Great Britain and France, Great Britain would have a right to call for those succors to which she was entitled by treaty. In this case the Republic would make "but an indifferent figure in the eyes of Europe" if she should not only be incapable of fulfilling her engagements, but even be unable to defend herself. The instructions, in conclusion, said that Great Britain would never permit the subjects of the Republic to become the carriers for England's enemies, and that the old claim of free ships, free goods would never be admitted.[2]

The ambassador, conscious of the weakness of his position, did not hesitate to call the attention of his superiors to it. His antagonists in the United Provinces, he said, had a great advantage over him, for while he recommended vigorous measures and showed the danger to which the Republic was exposed, the French ambassador recommended quiet and ease without expense except for the protection of commerce. As soon as the Prince of Orange had recommended

[1] Yorke to Suffolk, March 31, April 3 and 7, 1778 (Sparks MSS., LXXII).

[2] Suffolk to Yorke, April 14, 1778 (Sparks MSS., LXXII).

the augmentation of troops, Vauguyon had told some principal members of the government that the United Provinces had nothing to fear from France, either in the Netherlands or upon the lower Rhine, since His Most Christian Majesty wished for peace, but that the dignity as well as the interests of the Republic required a strong navy. On account of these conditions, Yorke had to arm himself with patience in the prosecution of the business, and he implored his superiors to do likewise. He suggested that he might be obliged to request orders for formally demanding military aid, for if the Dutch violated one treaty, because they would or could not give assistance, they had no right to claim the privileges of 1674 which were so notoriously detrimental to Great Britain because of free ships and free goods.[1] The military proposition of the stadtholder had been defeated, principally by the resistance of Amsterdam, which city gave as reason for her attitude that by the increase of the Dutch army the jealousy of some neighboring power might be excited while, on the other hand, no real protection was offered to the Republic. Thulemeier no doubt was right when he suspected that France had had a hand in the game.[2]

To what degree the decline of England's reputation had progressed at this period is shown in a confidential letter written by Yorke. It had become a fashion, he said, to look upon Great Britain as unable to maintain the contest with her former colonies in America. He attributed this to the many libels published in England. Some fortunate event was absolutely necessary, either in America or at sea, to restore in the political world the appearance which Great Britain had "such a right to assume." Then her neighbors would soon speak again "the language of respect and friendship."[3] The ambassador, of course, judged chiefly from the conduct of the Dutch and perhaps from the attitude of Vauguyon and his followers in the United Prov-

[1] Yorke to Suffolk, April 21, 1778 (Sparks MSS., LXXII).
[2] Thulemeier to Frederick II, April 21, 1778 (Bancroft MSS., Prussia and Holland).
[3] Yorke to Suffolk, private, May 29, 1778 (Sparks MSS., LXXII).

inces. He was highly indignant at the French ambassador's achievements and blamed him almost solely for the discontent which was spreading more and more in the Republic at the English aggressions at sea. France was taking advantage of every trifling event, in order to incite the Dutch merchants to complain.[1] The smallest outrage of a privateer at sea was swelled into an article for the Dutch gazettes to represent England as bent upon ill treating the trade and subjects of the Republic.[2] Of course, the French party used to the best possible advantage the weapons which England herself furnished them so abundantly.

Sir Joseph was, at this time, almost in despair and highly discontented with everything and everybody in the United Provinces, but especially with the Prince of Orange. "His Majesty's ambassador," he wrote, "is very singularly circumstanced in such a Situation. His Instructions, the Interest of his Country, his own Wishes, all unite to bind him to the Stadtholderian Party, and yet the little Union which is permitted in that Party, and the total want of Concert, leave him almost without assistance to counteract the Ambassador of France. The great difficulty of all proceeds from the want of firmness in the Prince of Orange, who with the best Intentions, a thorough knowledge of his Country's and his own Interest, and convinced of the existence of the Intrigue and its consequences, takes no step whatever to stem the Torrent, but contents himself with thinking and saying, that tho' he has not the force to carry what he wishes, he has however a *Liberum Veto* to reject whatever may be improperly proposed by others."

To bring about a change and to rouse the Prince of Orange "at least to a sense of his own Danger, and of his Duty to himself, his Family and his Country," Yorke proposed a curious method which clearly shows his misconception of the political situation. He suggested that Frederick the Great should be induced to influence the stadtholder,

[1] Yorke to Suffolk, July 28, 1778 (Sparks MSS., LXXII).
[2] Same to same, private, August 28, 1778 (ibid.).

basing this odd recommendation on the supposition that the King of Prussia owed gratitude to England, because George III had, in Frederick's existing contest with Austria over the Bavarian succession, "openly and generously espoused the Prussian Cause." This proposal, however, was not acted upon by the English government.[1]

The hostilities between England and France began in June, 1778,[2] and with them serious troubles for the United Provinces. The aggressions of the English became more and more open and also more frequent. In July they began to stop Dutch vessels in the English Channel. In the precarious position of the English this action was surprising. In the midst of the dangers, Thulemeier wrote, which menaced Great Britain from all sides, the English continued to heap impositions on the Dutch. Recently five large merchant vessels of the latter had been taken as prizes.[3] Nothing could be more welcome to France than these actions of the enemy. Her consuls and agents at foreign ports were charged to make public Great Britain's treatment of the United Provinces and to announce that it was very unsafe for Dutch ships to sail without convoy. Amsterdam urged that the Dutch navy be increased in order to free the Republic from this tyranny. Yorke remarked thereupon, "This country is running headlong into a dependence on the Court of Versailles."[4] On September 14,

[1] Yorke to Suffolk, August 25, 1778, most private (Colenbrander, Patriottentijd, I, 134, 374–376).

The answer which Yorke received left no doubt concerning the relations between the courts of St. James and Berlin: "His Prussian Majesty confines his Expressions of Cordiality to H. M. in his quality of Elector only; all his Communications in the Dispute with the Court of Vienna have been limited to H. M.'s Electoral Minister; the Servants of the Crown have been strictly excluded, and His Language with regard to this Country is very little changed. Many things therefore must happen (to speak openly to Your Excellency) before He can be enough considered as a Friend to be applied to in the Manner you suggest" (Suffolk to Yorke, September 1, 1778, most private, in Colenbrander, Patriottentijd, I, 134, 376).

[2] Colenbrander, Patriottentijd, I, 129.

[3] Thulemeier to Frederick II, September 1, 1778 (Bancroft MSS., Prussia and Holland).

[4] Yorke to Suffolk, September 8, 1778 (Sparks MSS., LXXII).

the States General received a lengthy petition from the merchants of Amsterdam and Rotterdam, asking for protection against the excesses of English war vessels and privateers.[1] The seizing of Dutch vessels by the English, however, continued. Before the end of September twenty-nine had been taken.[2]

In consequence of a complaint transmitted to the court of St. James by Count Welderen, some Dutch vessels had been released and Yorke reported from the Hague that this measure had a good effect in the United Provinces for the moment.[3] He was, however, very much mistaken, since Welderen, by direction of the States General, handed another memorandum in much stronger terms to the English cabinet transmitting the grievances of the Dutch merchants. The States General, he wrote, had seen with satisfaction that the vessels "Martina" and "Hendrik en Alida" (taken when sailing from Curaçao and St. Eustatia directly toward the Republic), the "Debora en Maria," "de Hoop," and "Adriana" (when bound from the United Provinces to France) had been released, since it removed the fear that England intended to ruin the commerce of the United Provinces. On the other hand, Great Britain, so far, had not offered any indemnity for the cost and damages occasioned by the seizure, and the captors, it seemed, had not received any mark of displeasure from His Majesty the King. The States General had learned with the greatest surprise that English vessels possessing commissions from the king had repeatedly violated Dutch territory in America and especially had almost blockaded the rivers of Essequibo and Demerari. There were also other complaints of the capture and other molestations of Dutch vessels by British men-of-war and privateers, in violation of the treaty of 1674. The United Provinces had no other resources than

[1] Sparks Dutch Papers; Thulemeier to Frederick II, September 18, 1778 (Bancroft MSS., Prussia and Holland).

[2] Thulemeier to Frederick II, September 25, 1778 (Bancroft MSS., Prussia and Holland).

[3] Yorke to Suffolk, September 15, 1778 (Sparks MSS., LXXII).

commerce and navigation, and the welfare of the Republic therefore depended wholly upon the freedom of her ships. The Dutch trusted that His Majesty would disapprove of the action of his subjects, contrary to the express provisions of the treaties, and that all Dutch vessels seized would be released and an appropriate indemnity paid which should cover the real cost and damages caused by their capture and delay. In conclusion Welderen said that the States General were confident His Majesty would find means for rendering impossible the recurrence of such violations of Dutch territory and Dutch navigation.[1]

The Dutch feared that by the interruption of their navigation their credit, the basis of every commercial country, might be undermined. Freight and commission trade, the most important contributors to the revenues of the United Provinces, were suffering most, and the merchants of the United Provinces became alarmed lest those branches of their commerce might wholly pass to rival countries which were able to defend their interests effectively against England. It was dangerous to suffer the molestation of commerce for another reason. There was a possibility, or rather a probability, that France might take countermeasures.[2] In fact, the French ambassador was working in this direction. Louis XVI, he declared to the Dutch ministers, was pleased with the recent action of the United Provinces regarding the defence of their navigation and promised the assistance of France. Vauguyon, however, stated that the regulations which France had published regarding the navigation of neutral powers would be revoked if England did not adopt similar measures within six months. The Dutch flag could not be respected by France if this was not done by Great Britain.[3]

The English, realizing that they were rapidly losing ground in the United Provinces, released some Dutch ships, and

[1] Welderen's memorial of September 27/28, 1778 (Bancroft MSS., America, Holland, and England).
[2] Cérisier, Observations Impartiales, 39 ff.
[3] Yorke to Suffolk, September 25, 1778 (Sparks MSS., LXXII).

orders were given for the dismissal of the rest except those which had naval or warlike stores on board. The British government contemplated also the issue of positive directions which would effectually prevent the taking of the Dutch vessels destined for French ports or the United States, but not carrying contraband. Naval munitions of every description were still to be seized, together with the vessels on which they were found. Whatever might be the consequences, every means would be exerted to prevent His Majesty's enemies from being supplied with such stores. Yorke was directed to call the attention of the Dutch government to the treaty of alliance with the States General of the year 1668. According to its stipulations any hostile act against the King of Great Britain and his subjects would form a casus foederis, entitling England to call upon the United Provinces for assistance. Yorke was to explain to the Dutch that this treaty was not less binding for them than the commercial treaty of 1674 for the English. The inference from this could be easily drawn. The United Provinces, upon requisition, would not be in a position to render the stipulated assistance, and Great Britain, consequently, would not be obliged to keep the treaty of 1674. The ambassador was directed to express these views of the English cabinet very cautiously and without taking any public step, in order to avoid altercation or disagreeable discussions.[1]

In the meantime, the complaints of Dutch merchants to the States General regarding English outrages at sea continued. Yorke reported that during the two days preceding the date of his letter no less than thirteen such complaints had been presented. He asserted that the French were intriguing in Amsterdam with the object of exciting public opinion to a point where the magistrates would have to yield. The latter would thus be compelled to ask the States General for protection against England and satisfaction for the losses sustained. The French were not scru-

[1] Suffolk to Yorke, September 29, 1778 (Sparks MSS., LXXII, CIII).

pulous in their means for attaining this end, declaring that Great Britain had no other view than to annihilate Dutch trade and navigation, and representing acts of violence committed by English adventurers as acts of the British government.[1]

That the complaints of the United Provinces, however, were not wholly unjustified, as Yorke tried to represent them, is seen from the fact that in October forty-two vessels had been taken by the English.[2] Moreover, the States General were rather reluctant in voicing the public opinion in this matter. When the merchants of Friesland sent up a petition similar to those of the citizens of the province of Holland and demanded by their deputies new instructions to Count Welderen, the States General refused, on the ground that this request contained no other matter than what had already been brought to the knowledge of the English government.[3]

France now took a step further in her policy regarding the United Provinces. Vauguyon, according to instructions from Paris, called upon the Prince of Orange and the Dutch ministers, representing to them the necessity "of supporting their trade to the Baltic and insisting upon the stipulations of the Treaty of 1674, respecting naval stores." That those articles should be safe under the flag of the Republic, he said, was of the greatest importance, and if England pursued her present course, France would certainly alter her conduct and visit Dutch vessels with the same vigor. He inquired whether or not the Dutch would protect, by convoys, their vessels carrying naval stores, adding that France would efficiently support such defensive measures. The ambassador was answered that representations had already been made to Great Britain.[4]

[1] Yorke to Suffolk, October 2, 1778 (Sparks MSS., LXXII). Regarding the Dutch grievances see also Thulemeier's report of the same date to Frederick II (Bancroft MSS., Prussia and Holland); Cérisier, Observations Impartiales, 39 ff.

[2] Thulemeier to Frederick II, October 6, 1778 (Bancroft MSS., Prussia and Holland); Colenbrander, Patriottentijd, I, 133.

[3] Yorke to Suffolk, October 10, 1778 (Sparks MSS., LXXII).

[4] Yorke to Suffolk, October 16, 1778 (Sparks MSS., LXXII).

The official English answer to the Dutch representations arrived at the Hague, but brought no change in the existing conditions. Count Welderen had been informed by Lord Suffolk that the English admiralty was directed to allow free transit to all Dutch merchant vessels, except those carrying contraband goods, and especially ship-building timber. It cannot be surprising that this answer did not satisfy the Dutch. It was rumored, according to an announcement of the admiralty at Amsterdam, after the beginning of November, that vessels bound for France or England would be granted such convoys as they required.[1] Great Britain was now ready to buy at an appraised value the naval munitions seized on Dutch vessels and brought to her ports. Besides she would pay the freight on the cargoes and compensate the proprietors for all expenses and losses occasioned by the detention of their vessels. Investigation regarding the actions of British captains in the territories of the United Provinces in America, especially on the rivers of Essequibo and Demerari, was also promised, and any culpables would be punished.[2]

The public mind in the United Provinces, however, was aroused too much to be appeased by Great Britain's weak attempts at reconciliation. Amsterdam continued her clamoring for protection,[3] and anonymous pamphlets were widely circulated, irritating the people still more. The reason, said an anonymous author, why England persecuted the Dutch was innate hatred and her jealousy of Dutch commerce and navigation. Even some of his countrymen tried to justify the hostile attitude of the English. The

[1] Thulemeier to Frederick II, October 16, 1778 (Bancroft MSS., Prussia and Holland).

[2] Suffolk to Welderen, October 19, 1778 (Bancroft MSS., America, Holland, and England); see also Davies, History of Holland, III, 445–446, concerning England's attitude with regard to the Dutch timber trade.

The promise regarding Essequibo and Demerari was repeated in December, 1778 (Suffolk to Welderen, December 11, 1778, in Bancroft MSS., America, Holland, and England).

[3] Thulemeier to Frederick II, October 20, 1778 (Bancroft MSS., Prussia and Holland).

pretext was often heard that the Dutch ships seized by the English had been carrying forbidden goods, but this could not be maintained as long as it was not shown that all of them had contraband on board. England, of course, did not like to have the United Provinces provide France with material for ship building. Had it not been equally hard for the Dutch to see Great Britain furnish the same materials to France from the treaty of 1674 to the peace of Nymwegen? The question was not what was liked, but what was permitted by the treaties.

It was furthermore said, continued this writer, that Dutch navigation from harbor to harbor in France strengthened England's foe, but he did not see how a reproach could be constructed from this, since the Republic was living in peace with France, and an order from the Dutch authorities forbidding this trade would be a breach of neutrality. He would also not let pass the argument pronounced by friends of England in the United Provinces that a number of French ports were blockaded by British vessels and therefore Dutch vessels must not enter them, especially when loaded with ship timber, because in this case proof would be required that the ports were really and efficiently blockaded. It was further said that England's attitude was justified by the failure of the United Provinces to furnish assistance in the war of 1756 to 1763. This was contrary to facts, for the Dutch had assisted Great Britain both by troops and ships during the last war. In return the English had seized so many Dutch ships that the United Provinces suffered more from England than from France, then their enemy. In conclusion he recommended as means for bringing about a change: frequent use of convoys; joining other nations, especially the United States of America, in the protection of commerce; pleading freedom of navigation, within the spirit of the treaties; and finally the strengthening of the forces of the Republic by all means.[1]

[1] Onderzoek van Groot-Brittanjes Gedrag, 140–147.

Such clever work on the part of the Patriots[1] did not remain without results. The appeals to the Dutch authorities for protection against England became more and more urgent. On October 23, 1778, the merchants of Amsterdam, Dordrecht, and Rotterdam addressed another petition to the States General expressing their dissatisfaction with the answer of the English ministry, and, pointing out once more the immense damage done to the United Provinces by Great Britain's proceedings regarding the timber trade with France, demanded redress of their grievances.[2]

In order to come to a friendly understanding with the United Provinces, if possible, Yorke was charged by the Foreign Office in London to negotiate with the Dutch.[3] In execution of this instruction he handed, on November 2, 1778, a memorial to the States General. Though, he said, the French threatened to invade Great Britain and her territories, the king, his master, still refrained from calling upon the United Provinces for the assistance stipulated by the most solemn treaties, and especially that of 1678, and the separate article of the treaty of 1716. All that was requested at present was a conference for discussing various articles in question in the treaties. It was not at all the intention of the king to disturb the customary commerce of the United Provinces with France, except in military and naval munitions. It was to be hoped that the sense of justice of the United Provinces and their friendship for Great Britain would prevent them from having naval munitions carried into France under the cover of convoys.[4]

The American agent at the Hague, learning of Yorke's

[1] In this connection van der Kemp, one of the foremost Patriots in the United Provinces, must be mentioned. Concerning the question of unlimited convoys he published anonymously a Collection of State Papers, with a preface by "Junius Brutus Secundus Frisco." Of him van der Capellen wrote on May 12, 1780, "The unlimited convoy and the whole Patriot party owe more than is known to this clergyman" (Fairchild, van der Kemp, 45).

[2] Sparks Dutch Papers, I, 88.

[3] Thulemeier to Frederick II, October 27, 1778 (Bancroft MSS., Prussia and Holland).

[4] Secret Resolution of the States General, November 2, 1778 (Bancroft MSS., America, Holland, and England; Sparks MSS., CIII).

step, predicted that the latter would find in Amsterdam formidable adversaries who were firmly resolved on an absolute refusal of the English requests. Dumas found also that the irritation against England was even growing, especially among the nobility.[1] The States General did not hasten their reply to Yorke. The Grand Pensionary, however, told him that convoys might perhaps be refused, but that the value of a conference must be regarded as very doubtful, since the stipulations of the treaty of 1674 were distinct, and as to the other treaties, the Republic was not at all obliged to furnish assistance.[2]

This friction between Great Britain and her ally naturally tended to further the cause of the United States. "In short," wrote the American commissioners at this time, "we see no probability of England's forming any alliance against America in all Europe, or, indeed, against France; whereas, on the other side, from the astonishing preparations of Spain, the family compact, and other circumstances, and from the insolent tyranny of the English over the Dutch and their consequent resentment, which has shown itself in formidable remonstrances as well as advances towards a treaty with us, there is reason to believe that if Great Britain perseveres in the war, both of these powers will at length be involved in it."[3]

Correct as this view proved to be in the end, there was no prospect yet of the United Provinces joining the war. England knew the feebleness of the Republic too well to be afraid of this. As to a treaty with the United States, even France was convinced that the Dutch would take such a step

[1] Dumas to the Commissioners in Paris, November 4, 1778 (Wharton, II, 829).

[2] Colenbrander, Patriottentijd, I, 135, 136.

Colenbrander remarks to this: "We see how small the board was on which the government was stepping now, and how no balustrade was there to hold on. A nice conduct, to insist upon a treaty which guaranteed very extended and advantageous privileges to the merchants, and then to refuse all protection . . . The denial of convoy would have had reason only if England had demanded it as a temporary measure pending the negotiations regarding the treaty . . ."

[3] Franklin, Lee, and Adams to the President of Congress, Passy, November 7, 1778 (Wharton, II, 831, 832).

only if they could do it without running any risk.[1] Yorke's memorial of November 2 had been referred to the committee of naval affairs for examination and report. This committee was now of the opinion that the conference asked for by the British ambassador concerning the meaning of the treaties relative to naval stores should be refused, but that the admiralty should not grant convoys for the protection of these materials. It was thought by many that Amsterdam might be able to thwart these plans by insisting upon the strict observance of the treaties. "Otherwise," the American agent at the Hague remarked, "the servile submission of the nation to the lash of the English will expose it to that of the French also, who will deprive it of the privileges it has heretofore enjoyed in their country, and will seize its vessels, after the example of the English."[2]

Both parties in the United Provinces now worked in every way possible to have the decision of the States General favorable to their respective views. Amsterdam, without doubt, was most deeply interested in the question of convoys. Large speculations had been made there in the business of furnishing naval stores to France, and during the preceding summer such large quantities of munitions had been purchased by the merchants that money became scarce in that city. One of the means by which the French party at Amsterdam expected to influence the government of the United Provinces was by causing the insurance firms henceforth not to insure Dutch vessels destined for France or the French colonies. This trick, which was expected to create a general cry for convoys, failed because of a counterstroke of the British party. The rich banker Hope, an English partisan, temporarily established himself as insurer, which brought the regular insurance firms quickly back to their business. The partisans of Great Britain on their part did not disdain to put into circulation anonymous incendiary pamphlets. In

[1] French Minister of Foreign Affairs to Vauguyon, November 9, 1778 (Sparks MSS., LXXXIII).

[2] Dumas to the Commissioners at Paris, November 10, 1778 (Wharton, II, 834, 835).

one of them it was said that Dutch merchants could lose three vessels out of four destined to carry naval munitions to France, and still make a profit.[1]

The merchants of Amsterdam began to call upon the stadtholder, making him personally responsible for the consequences of a refusal to grant unlimited convoy. Jean de Neufville, their speaker, requested efficient measures for the protection of the commercial interests of the country, referring to the prince as the admiral-general of the United Provinces and emphasizing the fact that a number of war vessels were already lying in the harbors, ready for action. The Prince of Orange answered evasively, that, for the year 1779, the construction and fitting out of thirty-two vessels had already been requested, and that every attention would be paid to the protection of commerce and navigation.[2] The States of Holland, deliberating on Yorke's memorial of November 2, did not at first reach a conclusion, but decided to determine by the majority of voices whether or not convoys should be granted for naval stores. A protest against such a measure was filed by the members from Amsterdam, led by Pensionary van Berckel, on the ground that the constitution required unanimity in this case, but they were overruled. At the same time Vauguyon informed the principal officers of the government, and through them the pensionaries of the cities, that Louis XVI expected the Republic to cause her flag to be respected by protecting her commerce according to the English-Dutch treaty of 1674. Other-

[1] Colenbrander, Patriottentijd, I, 136.

In footnote 3, ibid., Colenbrander says, "Thulemeier deelt het pamfletje mee bij zijn dépêche van 24 November 1778." Undoubtedly this pamphlet is identical with the one which G. Bancroft found with Thulemeier's report of November 10, 1778. In Bancroft's MSS., Prussia and Holland, these remarks appear at the end of that letter: "Accompanying this dispatch is an interesting paper 'Examen des plaintes des négocians d'Amsterdam au sujet de la saisie des vaisseaux Hollandais chargés de bois de construction pour la France.' . . . It has no date and no signature, but from its contents one would conclude it was written by Yorke. . . . It is an argument in favor of Great Britain upon the construction of the treaty of 1674."

[2] Blok, Geschiedenis, VI, 327.

wise, the ambassador declared, "the king is immovably fixed in his determination to deprive the [Dutch] nation of those advantages which his majesty, out of pure kindness, and without any obligation by treaty, has hitherto permitted it to enjoy in the ports of France."[1] The fear of England, however, was still too great; the assembly of the province of Holland refused the employment of convoys by merely a majority of voices.[2] Amsterdam protested, declaring the resolution void, since, according to the constitution, it could be passed only by a unanimous vote.

The English party triumphed, and Sir Joseph Yorke hastened to send a special messenger to London to transmit the news. Dumas expected that the English government would boast of this victory in Parliament and in the press, while the protest of the city of Amsterdam would probably not be mentioned. He gives an interesting description of the sentiment prevailing among the deputies after this curious session. "I will only add," he said, "that to-morrow morning the members from the great city [Amsterdam] will depart, and with them all the glory of Belgium [sic]. The others are ashamed of their own work, dare not boast of it, and hang down their heads. It has even been attempted to circulate the report that the famous resolution was adopted unanimously and in conformity with the wishes of the great city."[3]

Deputations were again sent to the States General, the Prince of Orange, and the ministers of the Republic,[4] but not from Amsterdam only. The States of Zealand entered officially with the States General a request for convoys to France.[5] Still the resolution which excluded from convoys

[1] Dumas to the Commissioners at Paris, November 13, 1778 (Wharton, II, 837).
[2] Thulemeier to Frederick II, November 13, 1778 (Bancroft MSS., Prussia and Holland).
[3] Dumas to the Commissioners at Paris, November 20, 1778 (Wharton, II, 843).
[4] Thulemeier to Frederick II, November 20, 1778 (Bancroft MSS., Prussia and Holland).
[5] Secret Resolution of the States General, November 13, 1778 (Sparks MSS., CIII).

only masts and ship timber, but no other naval munitions, was passed by the States General.[1] Serious consequences were feared. The Patriots like van der Capellen were shocked and indignant. Amsterdam protested[2] and was expected to refuse payment of her contributions to the expenses of the Republic, amounting to about one quarter of the whole, and even to ask assistance of France, which would certainly be granted. The latter power was likely to execute her threats of seizing, in her turn, English property on board Dutch ships, and of depriving them of the privileges they enjoyed in French ports.[3] These considerations probably caused the Dutch government to withdraw everything that looked like submission to the English demands. Count Welderen, therefore, had to hand to the British government a declaration which contained only the refusal of the conference asked for. The resolution concerning convoys was not mentioned at all.[4]

The old question, whether the army or navy was to be increased, was soon taken up again in the United Provinces. "The friends to themselves and to us," wrote Arthur Lee from Paris, "are for augmenting their marine; the purchased advocates of England and the dependents of the Stadtholder are for increasing their army." The French party, of course, was eager to strengthen the Dutch navy in order to be able to fight England at sea. The English party, on the other hand, was anxious to increase the army of the United Provinces so as to meet any attack from France on land. The latter seemed to be determined to carry out her threats regarding the seizure of English goods on board neutral vessels,[5] but, in reality, she was much more

[1] Colenbrander, Patriottentijd, I, 137; Doniol, Histoire, III, 718.
[2] Van der Capellen to Erkelens; same to Governor Trumbull, December 7, 1778 (Beaufort, Brieven van der Capellen, 82 ff.).
[3] Dumas to the Committee on Foreign Affairs, December 3, 1778 (Wharton, II, 847).
[4] Colenbrander, Patriottentijd, I, 137.
[5] Arthur Lee to the Committee of Foreign Affairs, December 5, 1778 (Wharton, II, 850).
The provinces of Holland and Friesland, which depended chiefly on commerce and ship-building, urged the increase of the navy; Utrecht, Overyssel, Guelderland, and Zealand, under the influence

anxious to have the sending of Dutch cargoes of naval munitions to her ports continued.

Vauguyon obtained from his government the approval of a plan, conceived in connection with Amsterdam, for thwarting the consequences of the resolution. The preparations for carrying out the scheme were completed when the ambassador visited the city on December 2.[1] Five days later he presented a memorial to the States General in which a clear and precise explanation was requested whether or not the United Provinces were determined to maintain a perfect neutrality. The King of France would decide according to the answer of Their High Mightinesses whether to maintain or to annul the orders already given. Partiality would be manifested by the States General if they did not make the most strenuous exertions to procure for the Dutch flag all the freedom belonging to an independent state, and for their commerce all the respect which the law of nations and treaties secured to it. In the case of such a breach of neutrality His Majesty would be compelled to suspend not only the advantages which the United Provinces enjoyed as neutrals, but also the material and gratuitous favor which their commerce enjoyed in French ports.[2]

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of the stadtholder, that of the army. A proposition brought forth by the Prince of Orange as a compromise, namely, to increase army and navy simultaneously, the former by fifty or sixty thousand men, the latter by fifty or sixty sails, was rejected by the States of Holland (Davies, History of Holland, III, 450; Resolutions of Holland and Westfriesland, March 10, 1779, in Sparks Dutch Papers; David Hartley, March 12, 1779, in Hansard, Parliamentary History, XX, 277).

Finally, the demand regarding the land forces was entirely refused, while the building of only thirty-two vessels was granted; but this number was soon augmented to fifty-two (Kampen, Verkorte Geschiedenis, II, 293).

[1] Colenbrander, Patriottentijd, I, 137.

[2] Wharton, II, 854, 855; Bancroft MSS., America, Holland, and England; Nieuwe Nederlandsche Jaerboeken, 1779, p. 164; Sparks Dutch Papers; Blok, Geschiedenis, VI, 329; Colenbrander, Patriottentijd, I, 137; Kampen, Verkorte Geschiedenis, II, 292 ff.

On July 26, 1778, France had issued liberal regulations regarding the shipping of all those countries which, within six months, would give proofs of their neutrality (Colenbrander, Patriottentijd, I, 137, note). The United Provinces, of course, enjoyed the advantages from these regulations besides the special privileges that had been conceded to them.

Besides taking this official step, Vauguyon accentuated in private conversations the determination of his royal master to take away from the Dutch trade all the privileges granted, in case the answer of the States General should not be satisfactory. He told the stadtholder very plainly that the latter's personal welfare, together with that of his family, might depend on the resolution of the States General and endeavored to get the Princess of Orange to influence her husband in favor of the French cause. He reached Princess Wilhelmine through her lady-in-waiting, Fräulein von Danckelmann, but was unsuccessful, since Wilhelmine answered that she did not intend to interfere in matters of state.[1] The prospect of the compliance of the States General with the French king's demand was not bright. The committee which was appointed to deliberate on the answer to Vauguyon's memorial decided that no change should be made in the resolution concerning convoys. When the ambassador learned this he immediately sent a note to the Grand Pensionary demanding a precise answer, yes or no.[2] The English party, however, was again victorious. In the assembly of the province of Holland on December 19, an evasive answer had already been formulated, which merely expressed the desire of the United Provinces to maintain strict neutrality. The deputies of the city of Amsterdam protested[3] as on November 18; nevertheless the resolution

[1] Nijhoff, Brunswijk, 171, 308; Colenbrander, Patriottentijd, I, 137, 138.

[2] Secret Resolution of the States General, December 29, 1778 (Sparks MSS., CIII).

[3] The deputies of Amsterdam contended that even if the refusal of convoys for vessels carrying ship timber could be supported on any principle of law or justice, England would not be benefited by it, because those goods could be supplied to France equally well by Sweden, Denmark, and the other nations of the North. The measure would result only in a transfer of this valuable trade from the United Provinces to other nations.

The merchants of Friesland urged that they had hitherto employed above two thousand ships, chiefly in the timber trade which was now virtually annihilated (Davies, History of Holland, III, 449).

Cérisier in a pamphlet dated December 6, 1778, and entitled "Observations d'un Vrai Hollandois" defended the American cause, but at the same time admonished the Dutch to remain neutral.

was adopted by the States General. On December 30, the agent of the latter handed it to Vauguyon, who refused to accept it, "as not being such as the king demanded." It was then resolved to send the answer to Berkenrode, the Dutch envoy at Paris, with instructions to hand it to Louis XVI.[1]

The Prince of Orange, exasperated, now sought protection from Frederick the Great, King of Prussia. It appears that Vauguyon's intimation that the safety of the stadtholder and his family was in danger had greatly alarmed William. He described to the king the critical situation in which the United Provinces were placed, and tried to convince him that the resolution regarding convoys was not the outcome of partiality for England. Frederick was entreated to protect the stadtholder and his family, for fear that France would cause a revolution in the United Provinces in order to upset the present government and constitution, and to do away with the stadtholder's office. William requested also Prussia's assistance in case France should invade the Republic.[2]

Frederick, who was still involved in the Bavarian succession controversy, showed no inclination to become entangled in the contest between England and France. He answered evasively that William knew best the real interests of the Republic, which alone should be decisive in her present delicate position. He recommended that the stadtholder should consult the constitution of the United Provinces for guidance in this dilemma. The Princess of

[1] Dumas to the Commissioners at Paris, December 18, 1778 (Wharton, II, 860, 861); same to the Committee of Foreign Affairs, January 1, 1779 (ibid., II, 872–875); Vaterlandsche Historie, XXV, 264; Thulemeier to Frederick II, December 22, 1778 (Bancroft MSS., Prussia and Holland); Secret Resolution of the States General, December 30, 1778 (Bancroft MSS., America, Holland, and England); ibid., December 31, 1778 (Sparks MSS., CIII).

[2] Nijhoff, Brunswijk, 172, 312.

This correspondence was begun with the approval of the Duke of Brunswick. It was thought necessary to inform Frederick differently from Thulemeier, who was suspected to have "sterke liaisons" with Vauguyon (Nijhoff, Brunswijk, 172).

Orange, notwithstanding her assertion to the French ambassador that she would never interfere in affairs of state, began at this juncture a lively political correspondence with her uncle, and the latter abandoned his reserve in communicating his opinion to her. "You have done too much for the English," he wrote to her on January 13, 1779, "you permit them to pillage your vessels at their pleasure. The French thought they might make use of the same imperious tone as the English, and you feel now the inconvenience." As a remedy he recommended that they should think more of the Republic than of her neighbors, and show preference for neither the British nor the French. The Republic must not become the slave of either, but remain the friend of both, and by means of her navy make herself respected at sea.

Frederick modified this advice in a letter of March 7, 1779, in which he stated why, in his opinion, the United Provinces ought to keep both powers in good humor. His reasons were, that the Republic had neither a formidable fleet, nor an army large enough to withstand a great power, and, furthermore, that she had no allies and consequently could not expect assistance from other powers. He did not consider the present troubles of the Dutch serious, but hoped, as he wrote to the princess on March 14, that they might prove small clouds which would soon pass. A few days later, on March 22, Frederick recommended closer relations with France. The question, he said, at present was to secure by convoys the merchant marine of the Republic against the English, in order to prevent the latter from enslaving her. If the French, he added, intended to attack the United Provinces, it would be too late to augment the army, since all the world was at war, and especially a great number of Germans were serving in America. In a letter, dated April 14, he became even more explicit regarding the course to be taken. The large Dutch cities, he said, did not want to lose their commerce, and since their vessels carried more goods to French than to English ports,

they did not like their stadtholder to be ruled by the arrogant haughtiness of the British ambassador at the Hague, but he continued to recommend the utmost caution in order not to make matters worse. On May 31, he suggested ample supplies for the island of St. Eustatia, a measure which would reconcile the French, since they would need those provisions in America. In short, the best course would be to bring about closer connections with France. Whatever might be the outcome of the present war, it would leave England utterly exhausted for many years and unable to mix in the affairs of the continent of Europe. Thus, whatever services the United Provinces might render, Great Britain would be unable to repay them, and would always remain the rival of the Dutch in commerce and navigation. On the other hand by pleasing France the United Provinces would retain their important trade with that country and, above all, preserve the Republic in her present state. The French had no reason to undermine the prerogatives of the stadtholder, which the English would be unable to restore if they should be lost through French attacks or intrigues.[1]

It is thus clearly shown that Frederick the Great sought to influence the United Provinces against England, and there is no doubt that, to some extent at least, he was responsible for their final attitude toward their former ally, especially concerning the question of convoys. The Prussian king, therefore, indirectly, sided with the Americans in this case as he did in others.[2]

[1] Colenbrander, Patriottentijd, I, 142–145, 380–384; Blok, Geschiedenis, VI, 329, 330.

[2] Regarding Frederick the Great's attitude toward the United States and the assistance which he rendered them, see of more recent authors, pro and contra: Pfister, Amerikanische Revolution, II, 160–168; H. Schoenfeld, Die deutschen, insbesonders preussischen Beziehungen zu den Vereinigten Staaten vor und während des Revolutionskrieges (Belletristisches Journal, Jahrgang 40, no. 25, 17. Juni, 1891, pp. 10–11; no. 26, 24. Juni, 1891, pp. 3–4); H. Schoenfeld. Anfänge deutschen Lebens und deutscher Politik in Amerika (Allgemeine Zeitung, München, Beilagen nos. 168 & 169, 30. & 31. Juli, 1897); Paul Leland Haworth, "Frederick the Great and the American Revolution" (American Historical Review, April, 1904).

On January 5, 1779, Berkenrode, the Dutch envoy in Paris, reported to the States General that Vergennes also had refused to accept their answer to Vauguyon's memorial. The French minister had requested him to withdraw the reply in friendship, otherwise the king would issue edicts which would be very disadvantageous for the United Provinces. Vergennes added the advice that the States General should thereafter negotiate with Vauguyon.[1] The subsequent proceedings in the Netherlands, however, proved again the supremacy of the English party.[2] On January 16, while the States General were still deliberating on the question, the French ambassador again presented a memorial. It contained the projected edict of Louis XVI excluding the United Provinces from the favors which France granted to neutrals on the sea and in her ports. An exception was made concerning the city of Amsterdam only, which was allowed to enjoy all former privileges. This step of the French government caused great emotion in the United Provinces. Vauguyon was told that it was against the Dutch constitution to treat with one city only, but he replied that this was neither a treaty nor a convention between France and Amsterdam, but that the city merely continued to enjoy what she had enjoyed before. The Republic ought to be well satisfied that, by means of Amsterdam, she would not lose all trade with France. The ambassador notified the Grand Pensionary that his royal master had fixed January 26 for publishing the new order, in case he should, in the meantime, not have received the answer which he demanded. A few days before that date, a decision not having been reached, a courier was dispatched from the United Provinces to Paris in order to obtain, if possible, a further delay of a week. In the beginning of February, however, the States General had not yet informed Vauguyon of their answer.[3]

[1] Sparks MSS., CIII, Ingekomen Brieven, IV.

[2] Arthur Lee to the Committee of Foreign Affairs, January 5, 1779 (Wharton, III, 13).

[3] Dumas to the Commissioners at Paris, January 12 to February

The French edict of December 25, 1778, not taking immediate effect, the United Provinces adopted expedients for carrying on their usual trade with France in a way which should not aggravate the situation. At the Texel were fifteen vessels ready to sail with naval munitions destined for France, and along with them about three hundred others with ordinary cargoes, also bound for France or her colonies. Nine war vessels were detailed to accompany this latter mercantile fleet to its destination, but it was suspected that the fifteen vessels for which no convoy was permitted had mingled among them. All passed the English Channel without accident. Thulemeier and Frederick the Great thought that this might be a good way to satisfy France, and, at the same time, not irritate Great Britain too much.[1]

Count Welderen, on the other hand, was again directed to make representations to the English court regarding the capture of Dutch vessels, emphasizing the fact that, according to the treaty of 1674, naval supplies were not considered contraband of war. He was to insist that all Dutch ships still held in British ports should be released immediately and direct orders given that the navigation from and to the colonies, from and to France, and from one French port to the other—contraband always excluded—was not to be disturbed in future.[2] The delay which the States General had requested regarding the execution of the French edict was granted by Louis XVI, and Vauguyon consequently was directed to notify them that, on February 8, the new rules would be published and executed, un-

16, 1779 (Wharton, III, 18–22); Secret Resolution of the States General, January 18, 1779 (Bancroft MSS., Holland, America, and England); same of February 5, 1779 (Sparks MSS., CIII); Thulemeier to Frederick II, January 22, 1779 (Bancroft MSS., Prussia and Holland).

[1] Thulemeier to Frederick II, January 12, 1779 (Bancroft MSS., Prussia and Holland); Colenbrander, Patriottentijd, I, 138, 139.

[2] Resolutions of Holland and Westfriesland, January 21, 1779 (Sparks Dutch Papers); Secret Resolution of the States General, January 26, 1779 (Sparks MSS., CIII); W. Lee to the Committee on Foreign Affairs, February 25, 1779 (Wharton, III, 65, 66).

less convoy should be granted to all Dutch vessels carrying naval munitions and especially timber.[1]

Amsterdam did not remain isolated in her opposition to the resolution of the States General of November 19, 1778. She was soon joined by the city of Haarlem, whose regents were Anti-Orangists. From this city there was a considerable export of fine linen to France, and the merchants who were interested in this trade feared harm if the edict should be executed. Moreover, the pensionary of the city, Zeeberg, shared van Berckel's views, and from now on the two cities cooperated regarding this question. Zealand promised William V full support in his attitude concerning convoys. Friesland, on the other hand, was less willing to follow the stadtholder's policy, owing to the fact that her regents were rather aristocrats than Orangists. The other provinces were less interested in the matter and would follow the least expensive policy, namely, that which rendered costly armaments at sea unnecessary. The English party, therefore, still prevailed, and when on February 18, 1779, the States General reached a resolution in answer to the French ambassador's note of January 16, there was no change of front. Vauguyon was requested to procure a revocation of the ordinance of December 25, 1778. He again refused to accept the resolution, since he was permitted to transmit to his royal master only the clear and precise answer that Dutch vessels carrying naval munitions would be protected. Every other reply, he said, was to be regarded as negative, and the French edict would immediately become valid.[2]

The ordinance was now published, but its execution was suspended by the French king until March 1.[3] All the privileges which Dutch vessels had enjoyed in French ports

[1] Secret Resolution of the States General, February 1, 1779 (Sparks MSS., CIII); Thulemeier to Frederick II, February 5, 1779 (Bancroft MSS., Prussia and Holland).

[2] Colenbrander, Patriottentijd, I, 145, 146; Blok, Geschiedenis, VI, 330; Secret Resolution of the States General, February 19, 1779 (Sparks MSS., CIII); Thulemeier to Frederick II, March 5, 1779 (Bancroft MSS., Prussia and Holland).

[3] Thulemeier to Frederick II, March 5, 1779 (Bancroft MSS., Prussia and Holland); Vaterlandsche Historie, XXVI, 28.

were revoked; orders were given to all French war vessels and privateers to search Dutch vessels destined for or coming from English ports in order to seize English goods; and, in addition, the import duty of fifty sous a ton, which was imposed in 1774 on Dutch ships trading to France, was renewed. Amsterdam and Haarlem, however, were not included in the provisions, on account of their animated appeals for unlimited convoys.[1] This was a clever stroke of French diplomacy calculated to defeat the English party in the United Provinces, because jealousy and financial losses must gradually draw the rest of Holland and the other provinces to Amsterdam and the French. At the same time France would continue to be supplied by the most powerful Dutch city, whose trade she could not afford to lose in this trying time of war. A few days later merchants of Rotterdam, and soon afterwards also of Dordrecht, sent strong petitions to the assembly of the province of Holland and the States General. It was requested that efficient means might be found to prevent the execution of the French edict, which must have the most disastrous consequences for their commerce.[2]

England by recklessly pursuing her policy made it easy for many of the Dutch to abandon the British party and to turn to the French. On March 26 the Prince of Orange, having finally fallen under the influence of the Grand Pensionary, van Bleiswijck, who inclined rather to France than to Great Britain, presented a note to Yorke, asking for an assurance that England would at least respect such convoys as did not protect vessels laden with ship timber. He received the answer that the king saw no reason for revoking the orders which had been given to the English admiralty in August, 1778, regarding the seizing of Dutch vessels carrying naval munitions. The resolution of the States General of November 19, 1778, which excluded ship timber but not

[1] Davies, History of Holland, III, 449; Kampen, Verkorte Geschiedenis, II, 292.

[2] Resolutions of Holland and Westfriesland, February 26 and March 5, 1779 (Sparks Dutch Papers).

other naval munitions from convoys had, therefore, not satisfied England and had not brought any change in the situation. In consequence of this reply partisans of Great Britain in the United Provinces were completely discouraged,[1] so much the more as France now put her threat into execution by seizing a vessel from the city of Middleburg, and collecting a duty on freight and tonnage from Dutch vessels in French ports.[2]

Frederick the Great strongly condemned the attitude of Great Britain toward the Republic. He thought their vigorous measures out of place and especially so the menaces of the English ambassador at the Hague, which did not produce the least effect, but tended only to agitate the minds of the people.[3] The events showed that he was right. Toward the end of March the assembly of the province of Holland passed a resolution that all ships except those carrying contraband of war should be protected by convoys. No difference was to be made whether the vessels were transporting goods on their own account or for English, French, or neutral houses; nor was it to matter whence they came or whether they were destined for France, Great Britain, or neutral countries.[4] The States General were asked to approve of this measure. Merchants of the city of Rotterdam also repeated their former request for convoy. They pleaded that their ships not only lay abandoned in their harbors, but for the few goods which were still allowed to be shipped foreign vessels had to be chartered in order to avoid the tonnage tax. Their commerce with England, Scotland and Ireland was also ruined as a consequence of the French edict. Worst of all, the new French tariff would deal the death

[1] Colenbrander, Patriottentijd, I, 150, 151; Thulemeier to Frederick II, March 19, 1779 (Bancroft MSS., Prussia and Holland).

[2] Thulemeier to Frederick II, March 16, 1779 (Bancroft MSS., Prussia and Holland).

[3] Frederick II to Thulemeier, March 24, 1779 (Bancroft MSS., Prussia and Holland).

[4] Resolutions of Holland and Westfriesland, March 30, 1779 (Sparks Dutch Papers); Thulemeier to Frederick II, April 6, 1779 (Bancroft MSS., Prussia and Holland); Colenbrander, Patriottentijd, I, 151.

stroke to the Dutch commerce. By this tariff, which had been in effect since May 1, a duty of fifteen per cent. had to be paid in France for all imports, besides the duties that had already been collected on the same goods. Some articles, as pitch, tar, masts, ship timber, ropes, etc., were left free, but these were dangerous to export because the English might seize the ships and cargoes.[1]

Since the beginning of April the aggressions of the British had even increased. Yorke in a memorial to the States General greatly resented the discrimination of the French regarding Amsterdam and Haarlem, which, he said, was only calculated to embroil the United Provinces in war with England.[2] Welderen reported about the same time that new orders had been sent to the commanders of English ships to arrest and bring to port all vessels, even if sailing under convoy, which were carrying naval munitions destined for France.[3] The States General resolved to ask Louis XVI not to discriminate among the provinces of the Republic,[4] but France continued the policy of strengthening the opposition in the United Provinces against the stadtholder and the English party. When, on March 30, the province of Holland had declared for unlimited convoy, the whole territory expected to be exempted from the oppressive French measure, and was greatly disappointed when this privilege remained confined to Amsterdam and Haarlem.

[1] Van der Capellen to Livingston, July, 1779 (Beaufort, Brieven van der Capellen, 116); Colenbrander, Patriottentijd, I, 160; Resolutions of Holland and Westfriesland, May 11, 1779, and of the States General, May 19, 1779 (Sparks Dutch Papers).

Regarding the secret resolution of the States General of April 26 to equip thirty-two vessels of war for the service of the year 1779 see Dumas' letter to the Committee of Foreign Affairs, May 15, 1779 (Wharton, III, 166–168).

[2] Yorke's Memorial, April 9, 1779, and Resolution of the States General of the same day (Bancroft MSS., America, Holland, and England; Sparks Dutch Papers; Vaterlandsche Historie, XXVI, 49).

Anonymous pamphlets supported Yorke, for example, "Avis à l'Auteur de la Lettre d'un Bon Patriote, sur le Mémoire, présenté aux Etats Généraux le 9 Avril, 1779, par M. l'Ambassadeur d'Angleterre."

[3] Secret Resolution of the States General, April 12 and 22, 1779 (Sparks MSS., CIII).

[4] Secret Resolution of the States General, April 18, 1779 (Sparks MSS., CIII).

The French government, aware that after Holland was satisfied the opposition in the rest of the provinces would lose its support and decrease, insisted upon the granting of unlimited convoy by the States General.[1] The assembly of the province of Holland was therefore repeatedly occupied with this question. In a resolution passed on June 11, it was said that speedy action had been expected from the States General on such an important matter, but two months had passed since March 30, when the resolution of the States of Holland and Westfriesland concerning unlimited convoy had been transmitted, and no answer had been received. The deputies of the province to the States General were then instructed to insist on the measure.[2]

When, toward the end of June, the States General had not yet passed a resolution, the province of Holland sent an ultimatum demanding a decision within four weeks. They resolved, furthermore, that in case unlimited convoys were not granted within that time, the States of Holland were to take matters up with the admiralties within the province. Since about nine tenths of the whole Dutch navy was under the administration of the admiralties, the province of Holland declared by her resolution that eventually she would alone decide the question of protection. At the same time circular letters were sent by Holland to the other provinces requesting them also to urge the measure of unlimited convoys.[3] In recognition of this step France immediately suspended both edict and tariff for the province of Holland, but only for the four weeks which had been allowed the States General.[4] The resolutions of the different provinces on the

[1] Colenbrander, Patriottentijd, I, 152.

[2] Resolutions of Holland and Westfriesland, June 4 and 11, 1779 (Sparks Dutch Papers).

[3] Resolutions of Holland and Westfriesland, June 24, 1779 (Sparks Dutch Papers); Colenbrander, Patriottentijd, I, 161; Van der Capellen to Dr. Richard Price, July 1, 1779, and to Livingston, July, 1779 (Beaufort, Brieven van der Capellen, 105, 106, 117); Blok, Geschiedenis, VI, 331; Doniol, Histoire, III, 782.

[4] Colenbrander, Patriottentijd, I, 161; Thulemeier to Frederick II, July 6, 1779 (Bancroft MSS., Prussia and Holland); Resolution of the States General, July 6, 1779 (Sparks MSS., CIII); Berkenrode's report, July 8, 1779 (Sparks Dutch Papers); Vaterlandsche Historie, XXVI, 84; Nieuwe Nederlandsche Jaerboeken, 1779, p. 169.

pending question were not favorable, most of them declaring that the forces of the country were not in a state to successfully carry out the measure of unlimited convoys. The province of Guelderland answered that she would vote for unlimited convoy if the province of Holland, in return, would vote for the augmentation of the Dutch army.[1]

This result was due to the activity of the stadtholder and the English party. The Prince of Orange had summoned the lieutenant-stadtholders of the provinces one by one to his court and given them instructions for their attitude in this contest.[2] Yorke proposed to his government as a last resort to demand military aid from the United Provinces, a step which would at least embarrass the enemies of Great Britain. As an outward motive for such a measure, he said, the fact might serve that France and Spain in June, 1779, had simultaneously declared war on England. This had, in fact, happened one year after hostilities had begun.[3] In accordance with this suggestion the ambassador was directed to deliver a memorial to the States General, in which he asserted that France was threatening to invade Great Britain, and his royal master was therefore obliged to claim from the United Provinces without loss of time the succor which was stipulated in the treaties of 1678 and after. It

[1] Resolutions of Holland and Westfriesland, July 21, 1779 (Guelderland); July 22, 1779 (Stad en Land); July 23, 1779 (Overyssel); August 4, 1779 (Utrecht); September 1, 1779 (Friesland), in Sparks Dutch Papers.

Amsterdam had pleaded for augmentation of the navy only, while Guelderland wanted the army increased. There had been an altercation in the States General on this question, especially between the Grand Pensionary and the pensionary of Amsterdam (Yorke to Suffolk, July 10, 1779, in Sparks MSS., LXXII).

[2] "The lieutenant-stadtholders were the persons by whom the Prince governed the smaller provinces; except in Zealand it was an official position for which one or the other prominent or influential person with extended relations in his district was chosen" (Yorke, July 9, 1779, in Colenbrander, Patriottentijd, I, 161, note 3).

The English party made strenuous efforts to convince the Dutch that it would be more prudent and profitable for them to follow England than France. An eloquent proof of these attempts forms an anonymous pamphlet published in May, 1779, and entitled "Defense de Sir Joseph Yorke, Ambassadeur d'Angleterre, s'il en a besoin."

[3] Colenbrander, Patriottentijd, I, 162.

was clear that a casus foederis existed according to the separate article of 1715.[1]

As the United Provinces were neither in a condition to furnish this aid, nor on account of the strength of the French party able even to grant it, the only course was to delay the reply. Consequently Yorke's memorial was taken over by the provinces for consideration, which meant that the matter would rest for any length of time. This delay, of course, would in itself have been an insult to Great Britain, if the measure had been put forward seriously. It had been intended to strengthen the English party and to embarrass the French partisans, but entirely missed its aim. Vauguyon remarked that the neglect of such an essential memorial in such grave circumstances meant a humiliating contempt of England. He thought it a good symptom for Great Britain's enemies, since it recalled the fable of the dying lion receiving a kick from the ass.[2]

The States General at the end of the stipulated four weeks had not reached a decision regarding convoys. The negotiations of the States of Holland with their provincial admiralty had also been unsuccessful. The latter, being controlled by the States General, showed no disposition to assist in so revolutionary a measure. In the meantime no convoys were granted at all, not even for vessels which were not carrying contraband or naval munitions. This inflicted an enormous loss upon Dutch commerce and navigation, but petitions to the States General were of no avail. This condition was due to a new proposal of the provinces to increase the Dutch army by 14,000 men, to which measure the cities of Amsterdam, Dort, Haarlem, Rotterdam, and Schiedam were opposed.[3] Yorke wrote that the probable outcome of it all

[1] Yorke's Memorial of July 22, 1779 (Bancroft MSS., America, Holland, and England; Sparks Dutch Papers; Blok, Geschiedenis, VI, 332).

[2] Vauguyon, August 24, 1779 (Colenbrander, Patriottentijd, I, 162, note 3); Franklin to Jay, October 4, 1779 (Wharton, III, 363).

[3] Resolutions of the States General, September 9, 1779; October 21, 1779 (Sparks Dutch Papers); Colenbrander, Patriottentijd, I, 163; Dumas to Franklin, September 14, 1779 (Wharton, III, 314, 315).

would be that a mercantile fleet would be sent out under convoy, pretending to protect only ships with non-forbidden cargoes, but that, as in the beginning of the year, a number of vessels laden with naval munitions would hide among the rest. The English government, therefore, warned the Dutch authorities that, this time, the vessels would not be permitted to pass without being searched.[1] The John Paul Jones incident, which occurred about this time, tended to strain the relations between England and the United Provinces still further.[2]

Toward the end of November Yorke addressed a new memorial to the States General. The king, he said, was surprised not to have received aid in answer to his request of four months before, and referred again to the separate article of 1716, which stipulated the casus foederis. French aggressions were to be seen in the declaration of war, the attack on the isle of Jersey, and the siege of Gibraltar. The combined forces of the House of Bourbon menaced the United Kingdom. A descent upon the British coast and a formidable invasion of England under the protection of all their naval forces was still their aim. The king therefore requested a speedy and precise answer to this important question. This memorandum was referred to the provinces also for deliberation[3] but the British demands did not impress the Dutch very deeply. Indifference was also shown by the French ambassador in the matter.[4]

On November 8, the Dutch provinces agreed that two merchant fleets, not carrying contraband of war or naval stores, should sail under the protection of several men of war. One was destined for the West Indies; the other, for France and Spain. With the vessels of the latter fleet were

[1] Yorke, September 7, 1779 (Colenbrander, Patriottentijd, I, 164, 165).

[2] Above, p. 62.

[3] Yorke's Memorial, November 26, 1779 (Bancroft MSS., America, Holland and England); Resolutions of the States General, November 26, 1779 (Sparks Dutch Papers); Trescot, Diplomacy of the Revolution, 84.

[4] Thulemeier to Frederick II, November 30, 1779 (Bancroft MSS., Prussia and Holland).

intermixed about 25 or 30 laden with hemp, iron, tar, pitch, etc., materials which by the resolution of the States General of November 19, 1778, were not excluded from convoy, and, at their own risk, also 18 or 20 ships whose cargoes consisted of ship timber.[1] The combined fleet left the Texel under the command of Vice-Admiral Bylandt, on December 27. On December 31 Count Welderen reported from London that, two days before, 30 to 40 merchant vessels under the convoy of some war vessels had been sighted in the Channel, and that, thereupon, Captain Fielding with six ships of the line and six frigates sailed from England.[2]

The Dutch and English vessels met off the Isle of Wight on December 31. Fielding asked permission of Bylandt to search the ships under the latter's convoy. The Dutch admiral declined, but showed papers signed by the skippers of all the vessels under his convoy stating that their ships were not carrying contraband of war. He added that no vessels with ship timber had been granted the privilege of convoy. Fielding, however, demanded also a declaration that the vessels had nothing on board of which ship material and especially cordage could be manufactured. Such a statement could not be made, since, as has been mentioned, some vessels laden with iron, hemp, etc., had been admitted to the convoy. The English commander declared that he would be compelled to use force for searching the ships. An encounter followed in which Bylandt, commanding only three ships of the line and three frigates, had to yield to the superior force of the English. Several vessels whose cargo consisted of ship material were taken by Fielding. A salute to the British flag was demanded and given. Bylandt was allowed to continue with the rest of his ships on his voyage, but refused to proceed and followed the captured ships to Spithead on the English coast.[3] When the news of

[1] Colenbrander, Patriottentijd, I, 166.

[2] Resolutions of the States General, January 4, 1780 (Sparks MSS., CIII).

[3] Davies, History of Holland, III, 451; Kampen, Verkorte Geschiedenis, II, 293; Welderen's report on the Bylandt-Fielding inci-

the incident became known at Amsterdam (on January 8), a great commotion occurred, especially on the stock exchange. It was thought impossible that England, still the friend and ally of the United Provinces, should have taken such a step.[1] The States General very soon instructed Welderen to make strong representations to the court of St. James concerning the capture and holding of the merchant vessels and to demand satisfaction for the insult done to the Dutch flag. At the same time Bylandt was ordered to sail back to the Texel with the war vessels under his command.[2]

The Bylandt-Fielding episode created a sensation all over Europe. Even in far-away St. Petersburg there was much talk about it, and the Dutch minister accredited to the Russian court reported that the English boasted greatly of this petty success.[3] When Count van Welderen handed an energetic memorial to Lord Stormont, the latter received it with indifference, remarking that an answer could be given only after the memorandum had been laid before the king; but that since the demand for aid had not been deliberated upon by the States General, England did not know whether to regard the United Provinces as friends and allies or only as friends and neutrals.[4] Great indignation was created at

dent, dated January 4, 1780, with enclosures; Missive van de Admiraliteit to Amsterdam (Sparks Dutch Papers); Vaterlandsche Historie, XXVI, 170 ff.

[1] Davies, History of Holland, III, 452; Nieuwe Nederlandsche Jaerboeken, February, 1780, p. 130; Thulemeier to Frederick II, January 14, 1780 (Bancroft MSS., Prussia and Holland).

Thulemeier sent with this report a detailed description, dated January 4, 1780, of the encounter. Its author was a former Prussian officer, von Schöning, now "Lieutenant de marine à bord du vaisseau amiral du Comte de Biland." The title of the essay is "Relation des am 31. December 1779 der Flagge der Vereinigten Provintzen Zugefügten affronts durch eine Königliche Englische Escadre unter Commando des Commodore Charles Fielding."

[2] Resolution of the States General, February 17, 1780 (Sparks MSS., CIII; Sparks Dutch Papers); Thulemeier to Frederick II, January 21, 1780 (Bancroft MSS., Prussia and Holland).

[3] J. J. de Swart to the States General, February 1 and 4, 1780 (Bancroft MSS., America, Holland, and England); J. Adams to the President of Congress, April 7, 1780 (Wharton, III, 600).

[4] Welderen to Fagel, March 7, 1780, with enclosures; Welderen's Memorial to Stormont, March 6, 1780 (Bancroft MSS., America, Holland, and England); Resolution of the States General, March 13, 1780 (Sparks MSS., CIII).

Amsterdam by the decisions of the Court of Admiralty in London of March 4 and 6, declaring those ships of Bylandt's convoy confiscated which carried hemp, etc., while vessels laden with ship timber and excluded from Bylandt's protection were released after their cargo had been purchased.[1]

About the middle of March the English government answered Welderen's memorial by saying that Bylandt had been the aggressor and that Fielding had acted in conformity with his instructions, and that the search of suspicious merchant vessels was not only necessary but just.[2] This point of view was rejected by the States General, who charged Welderen to present another memorial to the English government insisting that Fielding was the aggressor,[3] because he sent an armed sloop to search the merchant vessels under Bylandt's command and consequently the latter's firing upon the sloop was to be regarded as an act of self-defence. Welderen was to ask again for satisfaction and indemnification.[4] The Dutch envoy in handing this memorandum to Lord Stormont added verbally that the United Provinces had never admitted the visitation of ships sailing under the convoy of Dutch war vessels, and that consequently, without the least of doubt, Fielding had been the aggressor. Stormont

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Stormont had already threatened in January that the Dutch would be regarded as neutrals and the existing treaties annulled if they did not furnish succors (Welderen to the States General, January 28, 1780, received February 7, 1780, in Sparks Dutch Papers).

[1] J. Texier and Company to the States of Holland and West Friesland, March 16, 1780, and to the States General, March 17, 1780 (Sparks Dutch Papers).

[2] Welderen, on March 17, 1780, transmitted to the States General, without comment, Stormont's answer of March 16 (Sparks Dutch Papers; Bancroft MSS., America, Holland, and England).

[3] At the instigation of the Prince of Orange Count Bylandt was placed before a Dutch court martial, but was acquitted on April 7, 1780 (Resolution of the States General, January 18, 1780, in Sparks MSS., CIII); Thulemeier to Frederick II, January 25 and February 4, 1780 (Bancroft MSS., Prussia and Holland); Prince of Orange to the States General, April 14, 1780 (Sparks Dutch Papers); De Jonge, Geschiedenis, IV, 426.

[4] Resolution of the States of Holland and Westfriesland, April 8 and 18, 1780 (Sparks Dutch Papers); Resolution of the States General, April 25, 1780 (Bancroft MSS., America, Holland, and England); John Adams to the President of Congress, May 2, 1780 (Wharton, III, 646, 647).

answered that he would lay the memorial before the king, but that the latter was satisfied that the English commander had acted according to the treaties and to his instructions. Besides, it would not be in the power of the king to change the sentence of the Court of Admiralty.[1]

The United Provinces after the seizure of the ships under Bylandt's convoy naturally experienced great public excitement, but they were apparently not yet ready to side openly with the Americans. "The Dutch," wrote William Lee from Brussels in March, "are in a very disturbed state. As yet there does not seem to be a probability of their taking a decided and open part with us in the war. The influence and power of the Prince of Orange are unfortunately too great to permit them to adopt those measures which their honor and interest direct, and which I believe a great majority of the people wish. The prince is retained against us by the flattering prospect of marrying his daughter to the Prince of Wales."[2] In February, 1778, Thulemeier had predicted that in case of a search by the English of Dutch vessels sailing under convoy, and a subsequent hostile encounter, Amsterdam would be exasperated and would bring to pass an understanding between France and the United Provinces.[3] Grave were then the doubts which even the most ardent friends of England entertained in the United Provinces regarding the correctness of Great Britain's step. The Duke of Brunswick did not hesitate to tell Yorke that England's attitude seemed to be poor policy, since it only facilitated the growth of France's influence in the Republic, and sacrificed old friendship to the delusion that it would be possible to cut off from France the supply of naval muni-

[1] Welderen to the States General, May 2, 1780, with enclosure; Memorial to Stormont, April 25, 1780 (Bancroft MSS., America, Holland, and England); Resolution of the States General, May 8, 1780 (Sparks MSS., CIII); John Adams to the President of Congress, May 19, 1780 (Wharton, III, 689).

[2] W. Lee to John Adams, March 17, 1780 (Wharton, III, 556).

Regarding the project of a marriage between the Prince of Wales and the stadtholder's daughter, see above, p. 22.

[3] Thulemeier to Frederick II, February 6, 1778 (Bancroft MSS., Prussia and Holland).

tions. The consequence would be that the whole Republic would be thrown into the arms of France.[1] The subsequent events show that he was justified in this prophecy.

The deliberations of the provinces on Yorke's memorials of July 22 and November 26, 1779, relative to the furnishing of aid had been continued without coming to any final conclusion.[2] The English ambassador, therefore, presented a third communication to the States General in March, demanding a satisfactory answer to his previous memorials within three weeks, or else Great Britain henceforth would regard the Dutch as neutrals and not as a "privileged" nation.[3] The States General instructed Welderen a few days afterwards to represent to the English government that the delay in answering Yorke's memorials regarding assistance was not a violation of the alliance between the two powers, since it was caused by the peculiar constitution of the United Provinces.[4] The Dutch envoy in carrying out these orders told Stormont that it would be impossible to receive the resolutions of all the provinces within three weeks and that the United Provinces therefore asked for a prolongation of the term. The English statesman answered that the time would not be extended, since Yorke in his last memorial had only repeated what had already been communicated to the States General on January 28.[5] Yorke

[1] Nijhoff, Brunswijk, 182, 183.

[2] Resolutions of the States of Holland and Westfriesland, February 2 and March 15, 1780 (Sparks Dutch Papers); Resolutions of the States General, March 14, 1780 (Sparks MSS., CIII).

[3] Yorke's Memorial to the States General, March 21, 1780 (Sparks Dutch Papers; Bancroft MSS., America, Holland, and England); Colenbrander, Patriottentijd, I, 170; Davies, History of Holland, III, 452, 453.

John Adams seemed to be mistaken when he wrote to the President of Congress on March 29 that the treaties would be revoked by England after three months in case the answer of the States General to Yorke's memorial should be a refusal of the succors (Wharton, III, 579). See also John Adams' letter to the President of Congress of April 3, 1780 (ibid., III, 592).

[4] Resolution of the States General, March 24, 1780 (Sparks MSS., CIII); John Adams to the President of Congress, April 3, 1780 (Wharton, III, 592).

[5] Welderen to the States General, March 31, 1780 (Bancroft MSS., America, Holland, and England); John Adams to the President of Congress, April 14, 1780 (Wharton, III, 614).

was authorized to announce a delay only in case there should be a prospect that the States General would grant assistance.

Even the Prince of Orange gave up all hopes of changing the public sentiment of the Dutch, which was now becoming more and more anti-English. The resistance of the British party was broken, and most of the provinces (Holland, Groningen, Friesland, and Overyssel) voted against furnishing assistance to England, basing their refusal principally upon the non-existence of the case of invasion of British territory, which alone, they claimed, could have obliged them to comply with the demand of the English king.[1] When, after the expiration of the three weeks allowed for the answer of the States General, the latter had not passed a resolution on the subject, England carried out her menace. On April 17, Lord Stormont informed Count Welderen that the term had expired and transmitted an order of the king, which the latter had given in his council of the same day. It stated that the States General had deserted the alliance that so long subsisted between the crown of Great Britain and the Republic and had placed themselves in the condition of a neutral power, bound to England by no treaty. Therefore the Dutch would from this time be considered to be upon the same footing with all the other neutral states not privileged by treaty, and all particular stipulations respecting the freedom of navigation and commerce in time of war contained in the treaties between the two powers, especially in the marine treaty of 1674, were revoked.[2] At the same time the commanders of the English war vessels and privateers were ordered "to seize and detain all ships and

[1] John Adams to the President of Congress, April 10 and 14, 1780 (Wharton, III, 605, 613); Dumas to the President of Congress (ibid., III, 612); Vreede, Laurens Pieter van der Spiegel, II, 7.

[2] Welderen to the States General, April 18, 1780, with enclosures of April 17, 1780 (Bancroft MSS., America, Holland, and England); Blok, Geschiedenis, VI, 334; Colenbrander, Patriottentijd, I, 170; J. Adams to the President of Congress, April 28 and May 8, 1780 (Wharton, III, 635, 636, 664); Vaterlandsche Historie, XXVI, 303; Kampen, Verkorte Geschiedenis, II, 293; Davies, History of Holland, III, 453, 454.

John Andrews tried to justify the English step (Two Additional Letters, 106–109).

vessels belonging to the subjects of the States-General when they shall be found to have on board any effects belonging to the enemies of his majesty, or effects which are considered as contraband by the general law of nations."[1]

The question of assistance was thus settled before the States General had reached a final conclusion, but in respect to convoys the situation was different. The Bylandt-Fielding incident discouraged the friends of Great Britain in the United Provinces, while the partisans of France obtained supremacy in the assemblies of the several provinces. The result was that, on April 24, the States General almost unanimously[2] resolved to grant henceforth unlimited convoys. A few days later also a resolution was taken by them to fit out, for the protection of commerce and navigation, fifty-two ships of the line and frigates.[3] Vauguyon thereupon handed a memorandum to the States General in which he said that Louis XVI had applauded the efforts of the States General to have their flag again respected. The king had therefore ordered him to announce to the Dutch government that the recent French orders establishing a new tariff and otherwise encroaching upon the commerce of the United Provinces had been revoked. Furthermore the king would not confine himself to reestablishing the subjects of the States General in the enjoyment of former favors, but he would give the Dutch a signal proof of his benevolence, in

[1] John Adams to the President of Congress, May 13, 1780 (Wharton, III, 675, 676).

[2] The deputies of the province of Zealand alone opposed the measure (Blok, Geschiedenis, VI, 334); Vaterlandsche Historie, XXVI, 306.

[3] Colenbrander, Patriottentijd, I, 170; Thulemeier to Frederick II, April 28, 1780 (Bancroft MSS., Prussia and Holland).

Half a year later about two thirds of the fifty-two vessels were ready, though cannon and crews were partly wanting in numbers (Blok, Geschiedenis, VI, 334). This part of the Dutch armament was largely due to a number of petitions to the States General, and so forth, requesting protection of the navigation (J. Adams to the President of Congress, June 2, 4, 5, 10, and July 7, 1780, in Wharton, III, 758, 759, 762, 768, 769, 777, 839).

On May 31, 1780, Franklin reported to the President of Congress in regard to the vigorous arming of the Dutch (Wharton, III, 745).

returning to them all the sums which had been received by the French custom administration in virtue of the decree and tariff.[1]

The English policy of aggression was thus a complete failure. It did not result in the submission of the United Provinces to the English demands as had been desired and expected, but, on the contrary, in the refusal of all of them. Military assistance was denied, unlimited convoys granted, and the increase of the Dutch navy resolved upon. Great Britain's object had been to draw the United Provinces away from France, but instead, by what must be regarded as rather awkward diplomacy, she had only caused the relations between the two countries to become closer. The outlook for the Netherlands, however, was very gloomy. It was to be expected that English war vessels and privateers would try to do great damage to Dutch commerce and navigation, while the navy of the United Provinces was not in a state to render sufficient protection. Great depression, especially on the stock exchange at Amsterdam,[2] was the consequence.[3] There was, however, just at this period, a ray of hope that protection might be tendered to Dutch navigation by the powers of the North, a question which will be discussed in the next chapter.

[1] Vauguyon's memorial of April 26, 1780, with the decree of the French king's council of state of April 22, 1780 (Bancroft MSS., America, Holland, and England; Sparks Dutch Papers); J. Adams to the President of Congress, May 2, 1780 (Wharton, III, 644–646); Vaterlandsche Historie, XXVI, 307; Davies, History of Holland, III, 454.

[2] Colenbrander, Patriottentijd, I, 171.

[3] Regarding the question of convoys and succors see the speeches of the Earl of Shelburne and Lord Stormont in Parliament on June 1, 1780 (Hansard, Parliamentary History, XXI, 633–635, 637, 642–644).

CHAPTER VI.

The United Provinces drawn into War with England.

The position of England was becoming extremely critical. She had to depend entirely upon herself in her struggle not only with her former American colonies, but also with France and Spain, while the United Provinces were commercially supporting her enemies. In the desire to be backed by one of the great European powers in the pursuance of the war, Great Britain approached Russia.

Sir James Harris (later given the title of Lord Malmesbury), a very clever diplomat, was sent to the Russian court in order to arrange, if possible, an alliance. He found two diverging political influences at work in the Russian capital, one emanating from Potemkin, who was rising in favor with Empress Catherine II, the other from Panin, the secretary of the Russian Foreign Office and also a favorite, but whose star was fading. Harris resolved to use the former statesman for his purposes, neglecting and thereby provoking against himself the other. The ambassador was soon to see his mistake in undervaluing Panin's influence.

Potemkin was able to arrange for Harris two secret interviews with the empress, during which she consented to an alliance with England. Upon his report to the British government, the ambassador received full powers to negotiate the treaty. In the meantime Panin, from whom the preliminary proceedings had been concealed, became aware of what was going on and succeeded in convincing his imperial mistress of the impracticability of the proposed coalition. Consequently negotiations were formally refused to Harris. For a moment, however, it seemed that in spite of Panin's counteractions he would be able to bring the two powers nearer together, or, at least, to inflame the empress against England's foes.

Two Russian vessels carrying corn were seized in the Mediterranean by the Spaniards, who were desirous of keeping all provisions from Gibraltar, which stronghold they still hoped to recover from the English rule. Catherine was very indignant when she heard of the fate of these ships, and Harris with Potemkin's assistance cleverly took advantage of the empress' ill humor in order to incite her more against Spain. Satisfaction was to be imperatively demanded while a fleet of war vessels was to sail from Cronstadt as quickly as it could be fitted out. Panin, however, soon discovered this scheme, also, and thwarted it in a most ingenious way. He told Catherine that the incident was deplorable and condemnable, but that it was the outcome of a false principle of public law rather than a proof of the ill-will of the Spaniards. This, he declared, was the proper moment to protest against such proceedings, and, since England agreed with Russia in the condemnation of the seizure, she would likewise concur with Catherine in condemning the system. The empress thereupon accepted his plan of sending to the belligerents a declaration that in future such violations of neutral rights would not be endured. The northern and central powers were to be invited to join in this action. Catherine was thus made to believe that her step would not only conform to the desire of Harris, but make her the head of a large confederation united in the pursuance of a noble aim.[1]

Her ultimate purpose was to establish the principle (which, however, had already been pronounced in the English-Dutch treaty of 1674) "that the navigation of neutral powers should remain as free and unobstructed in time of war, as in that of peace; and that provided their ships were not laden with contraband goods, they should enjoy the liberty of conveying, free of seizure and restraint, all other articles whatever, though belonging to the subjects of the powers at war."[2] What appealed to the empress

[1] Trescot, Diplomacy of the Revolution, 73–76.
[2] J. Andrews, History of the War with America, France, Spain, and Holland, IV, 4.

above all was the prospect which opened itself for enlarging Russian commerce and navigation. American, British, French, and Spanish merchant vessels were liable to capture by the belligerents, and, consequently, appeared only in reduced numbers on the seas. Russia now had an opportunity to start an enormous carrying trade. She possessed a sufficient number of ports and had at her disposal an energetic and bold population which could be used to advantage in the merchant service.[1] Under present conditions, however, commerce and navigation were not secure even for neutrals. "From every shore of Europe, from almost every quarter of the globe, in fact," complaints resounded of English aggression and piracy. Russia herself had experienced heavy losses. A large number of Dutch vessels were employed by Russian merchants, and many of those ships had been captured by the English. On the other hand, no country owned a navy sufficiently large and effective to cope with the English.[2] The only way to render the seas again free and secure seemed to be a combination of the naval forces of the various countries interested. To create such a coalition was now planned by Catherine. Her message to the different courts was written and sent secretly.

The declaration dated February 26, 1780, stipulated in detail:—

1. That all neutral vessels should be able to navigate freely from one port to another, even upon the coasts of the powers at war.

2. That the effects belonging to the subjects of the belligerents should be free in neutral ships, excepting always contraband goods.

3. That naval stores and provisions should not be considered contraband unless belonging to the government of a belligerent.[3]

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[1] Wharton, I, 447.

[2] Davies, History of Holland, III, 455.

[3] As was expressed in the treaty of 1734 between Russia and England and in that of 1674 between the United Provinces and

4. That a port should be considered blockaded only if it was guarded so well that no attempt could be made to enter into it without evident danger.

5. That these principles should serve as a rule when there was a question regarding the legality of prizes.[1]

Ambassador Harris was absolutely ignorant of the nature of the Russian missive sent abroad. The empress herself told him that a communication would shortly be made to the English court which would completely meet the wishes expressed to her, and the English diplomat eagerly reported this answer to his authorities. The disappointment and indignation following the receipt of the Russian note by the British cabinet were therefore great. Instead of being a blow at England's enemies, the declaration presented a new maritime law which was directly opposed to the whole maritime policy of Great Britain and to a practice which she could least afford to dispense with in her present critical condition.[2]

Bitter were the criticisms of Russia's attitude made by contemporaneous English writers. "It was," wrote one of them, "a matter of peculiar astonishment that Russia should be at the head of a combination so injurious to Great Britain. The favors she had received from the British ministry, in her late war with the Turks, and still more the commercial benefits resulting from a connection with this country, seemed to secure the good will of Russia, and even its assistance, in case of necessity. Little, therefore, was it expected that it should prove the first of all European potentates in that inimical declaration, the intent of which was to deprive Great Britain of the principal resources that enabled her to stand her ground in the midst of so many difficulties."[3] Concerning the reception which the

England, only arms, ammunition, and military accoutrements should be considered as contraband (Davies, History of Holland, III, 455, 456).

[1] John Adams to the President of Congress, April 10, 1780 (Wharton, III, 608); Mahan, Influence of Sea Power upon History, 1660–1783, p. 405.

[2] Trescot, Diplomacy of the Revolution, 76, 77.

[3] J. Andrews, History of the War, IV, 3, 4.

English government gave Catherine's declaration, the same author said that Great Britain, contrary to her custom and character, was compelled to "temporise" on this trying occasion. "Her answer to this mortifying declaration, though guardedly expressed, was not wanting in terms sufficiently clear to remind Russia how different a part Great Britain had acted to her in the day of need."[1] Even much later, English critics expressed themselves scarcely less severely, numbering Catherine among the concealed, if not the open, enemies of Great Britain.[2]

The northern powers, Sweden and Denmark, considered Russia's offer favorably, their main products, naval stores and grain, being those of which England was chiefly interested in depriving her enemies. The coalition to which Catherine's plan finally led was called the Armed Neutrality, because the contracting parties, neutrals in the present war, bound themselves, if need be, to defend their principles by a combined armed fleet of a fixed minimum number.[3] It formed an important factor in the American Revolution. England had not only lost her last hope of a continental alliance, but saw herself seriously hampered in her naval actions even by inferior European sea powers. Moreover, the Armed Neutrality added a new enemy to her foes, the United Provinces of the Netherlands.

The belligerents, against whom Sir James Harris had advised Catherine, cleverly seized the opportunity to turn the affair to their own account. Spain made restitution and recognized the new maritime code, thereby reconciling the empress. France praised the wisdom of Catherine and con-

[1] J. Andrews, History of the War, IV, 4.

See the answer which the English court made to the declaration of the Empress of Russia in J. Adams' letter to the President of Congress, May 8, 1780 (Wharton, III, 661, 662).

[2] See Fitzmaurice, Shelburne, III, 83.

[3] Mahan, Influence of Sea Power, 405; Pfister, Amerikanische Revolution, II, 181.

Portugal, influenced by England, did not accede to the treaty, much to the disgust of France and Spain, who were indignant at her partiality for Great Britain (Carmichael to the Committee of Foreign Affairs, August 22, 1780, in Wharton, IV, 39).

sented to the principles of the Armed Neutrality, which the former claimed had already been expressed, in general, by her ordinance of 1778.[1] For the protection of the commercial interests of Russia it seemed at least desirable, if not necessary, that the United Provinces also should accede to the Armed Neutrality. Catherine therefore instructed Prince Gallitzin, her envoy extraordinary at the Hague, to negotiate with the States General to this effect.[2]

Already in March, 1780, John Adams had written from Paris that there were rumors of the conclusion of a quintuple alliance between Russia, Sweden, Denmark, Prussia, and the United Provinces for the maintenance of the honor of the flags of these powers. Yet he thought that such a combination would be more advantageous to France and Spain than to Holland, because it would facilitate the providing of their marine arsenals with ship timber, hemp, etc. This would greatly embarrass Great Britain, since her policy had always been to prevent the growth of the navies of her enemies by intercepting their supplies.[3] Adams' announcement, however, was premature.

Prince Gallitzin entered upon his new duties about this time. Couriers from St. Petersburg arrived with despatches and he immediately conferred with the president of the States General,[4] presenting also a memorial to that assembly.

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[1] Trescot, Diplomacy of the Revolution, 77.

Franklin advised Congress also to conform to the principle of the Armed Neutrality, that free ships made free goods, by giving orders to American cruisers not to molest foreign ships (Franklin to the President of Congress, August 9, 1780, in Wharton, IV, 24). Congress, acting upon a motion of Mr. Adams, resolved: "That the board of admiralty prepare and report instructions for the commanders of armed vessels commanded by the United States conformable to the principles contained in the declaration of the Empress of all the Russias on the rights of neutral vessels.

"That the ministers plenipotentiary from the United States, if invited thereto, be and hereby are respectively empowered to accede to such regulations, conformable to the spirit of the said declaration, as may be agreed upon by the Congress expected to assemble in pursuance of the invitation of her Imperial majesty" (Wharton, IV, 81).

[2] Davies, History of Holland, III, 456.

[3] J. Adams to the President of Congress, March 18, 1780 (Wharton, III, 558).

[4] Same to same, April 7, 1780 (ibid., III, 599).

It contained a copy of the declaration of the empress to the belligerent powers, and invited the United Provinces to make common cause with her. Gallitzin, according to his memorandum, did not doubt that the States General would consider this invitation and make, without delay, a declaration to the powers actually at war, founded upon the same principles as those of the empress. Negotiations with the other neutral powers on this subject were suggested.[1]

The States General informed the several provinces of the Russian proposal and asked for quick action.[2] Deliberations were eagerly taken up by Holland and there was a prospect that a decision would speedily be reached. The American agent at the Hague felt sure that this resolution would settle the matter "agreeably to the views of the empress and to the general wishes of all good men." The other provinces would soon follow suit, and their action must accelerate the general pacification. "This intelligence," he remarked, "is thought, not only by myself but by many others, very important to the United States."[3]

England dreaded most the accession of the United Provinces to the Armed Neutrality. The Dutch navy, it is true, was utterly ineffective, yet under the protection of that coalition, Dutch commerce and navigation would not only do immeasurable damage to England's commercial interests,[4] but by the undisturbed furnishing of naval munitions to France and Spain considerably strengthen the position of the foes of Great Britain. What sentiments prevailed in English official circles regarding this question is shown by a report of Thulemeier to the effect that, according to a com-

[1] Memorial of Dimitri Prince de Gallitzin to the States General, April 3, 1780, with enclosure "Declaration aux cours de Londres, Versailles et Madrid" (Bancroft MSS., America, Holland, and England; Sparks Dutch Papers); Thulemeier to Frederick II, April 4, 1780 (Bancroft MSS., Prussia and Holland); J. Adams to the President of Congress, April 10, 1780 (Wharton, III, 606–608).

[2] J. Adams to the President of Congress, April 14, 1780 (Wharton, III, 613, 614).

[3] Dumas to the President of Congress, April 13, 1780 (ibid., III, 611, 612).

[4] Pfister, Amerikanische Revolution, II, 181.

munication made to him by Gallitzin, Count Welderen had secretly informed his superiors of imminent danger threatening from England. The Dutch envoy had learned that in a council held at St. James, most of the English cabinet officers had recommended a declaration of war against the States General in case the latter should accept the invitation extended to them by Russia. Prince Gallitzin observed to the Prussian envoy that he deemed this a trick of the ministry in London, because he could never believe that the British government would use the invitation of the empress as a pretext for a war with the United Provinces.[1]

On April 13 the province of Holland resolved to accept Catherine's invitation to conferences. A copy of the resolution was to be transmitted to Prince Gallitzin, de Swart, the Dutch resident at St. Petersburg, and the ministers of the United Provinces at the courts of Copenhagen, Stockholm, and Lisbon.[2] Other provinces soon followed,[3] as had been predicted by Dumas. The empress, through de Swart,[4] expressed her gratitude to the Dutch that her proposition had been received so favorably by the States General and the provinces.[5] Panin hoped that the United Provinces would

[1] Thulemeier to Frederick II, April 28, 1780 (Bancroft MSS., Prussia and Holland).

[2] J. Adams to the President of Congress, April 28, 1780 (Wharton, III, 638, 639); Thulemeier to Frederick II, April 18, 1780 (Bancroft MSS., Prussia and Holland).

[3] Guelderland and Zealand. J. Adams to the President of Congress, May 8, 1780 (Wharton, III, 655).

[4] De Swart was apparently not a very capable diplomat. "The Dutch Resident, Swart," said Harris of him, "is a man neither of birth nor character, totally improper for the post he fills. . . . One of the most despised and unnoticed of my colleagues" (September 20, 1779, and April 28, 1780, in Harris, Diaries and Correspondence of James Harris, First Earl of Malmesbury, I, 225, 257). The Grand Pensionary called him "un être trop peu considérable pour être chargé d'une commission importante" (Vauguyon, June 23, 1780, in Colenbrander, Patriottentijd, I, 179). Still Amsterdam declared to the stadtholder that it wanted no other minister at St. Petersburg than de Swart. Yorke concluded that the resident was sold to Amsterdam and that he was the only one who served the city well (Yorke to Stormont, June 20, 1780, in Sparks MSS., LXXII).

[5] J. J. de Swart to the States General, June 6, 1780 (Bancroft MSS., America, Holland, and England).

endeavor to arm vessels and to take their share in the protection of commerce and navigation. He thought it necessary, above all, that the States General should send a declaration like that of Russia to the belligerent powers.[1]

The dread of England, however, still prevailed in the Netherlands and it was feared that she might take revenge by seizing the East and West Indian possessions of the United Provinces. On June 29, 1780, the city of Amsterdam passed a resolution in which it was declared that the accession to the league of the Armed Neutrality should be based on the condition that Russia and the other neutral powers guarantee to the United Provinces all the "possessions fixed and immovable" of the latter, both in and out of Europe.[2] This decision was inserted in the acts of the provincial assembly of Holland, at the Hague, July 1, 1780. Here it was thought necessary that a defensive treaty of alliance and also the guarantee of the Dutch possessions in both Indies should form the basis of negotiations with Russia. Many of the deputies disapproved of this proposition. The Russian ambassador, on the other hand, was much dissatisfied with the turn affairs had taken and attributed it to the Prince of Orange and the English partisans.[3]

A few days later the American commissioners at Paris

[1] Secret Resolution of the States General, June 13, 1780 (Sparks MSS., CIII).

[2] Wharton, III, 831.

[3] Thulemeier to Frederick II, July 7, 1780 (Bancroft MSS., Prussia and Holland).

It seems that, in this question, the Duke of Brunswick rather than the Prince of Orange was opposed to the accession of the United Provinces to the Armed Neutrality. The duke repeatedly called the stadtholder's attention to the danger which such a step would involve, but in vain. Brunswick therefore supposed that the prince's attitude was due to Frederick the Great's influence. On February 28, 1780, the latter had written that the Republic should try to render her position at sea formidable and to conclude for the protection of commerce a defensive alliance with Sweden and Denmark. This, he thought, was the best means for bringing England back to a reasonable behavior (Nijhoff, Brunswijk, 186).

Brunswick's reason for distrusting the Russian policy was that after all Catherine (and her favorite Potemkin) inclined rather to England, and that therefore the league of neutrals would do no harm to that power.

were advised from the Hague that "the talk had been of a congress to be held in that residence." The Empress of Russia was said to have expressed her desire of having all the conferences take place at St. Petersburg, and the Prince of Orange, thereupon, had proposed and the States General agreed to the sending of Baron van Wassenaer-Starrenberg and Baron van Heeckeren van Brandsenburg as ministers plenipotentiary to Russia in order to take part in conferences to be held there for the protection of neutral commerce.[1] In fact, however, the provinces were as indecisive on this question as on all others, the negotiations with Russia dragging slowly.

The American agent at the Hague thought the English party responsible for this procrastination, as they continued to perplex, delay, and cross everything. In his opinion the English intrigued in the United Provinces more than in all Europe besides.[2] They tried apparently every possible means to keep the Netherlands from taking part in the league of the Armed Neutrality. According to Prince Gallitzin the English court informed Count Welderen that the king would not hesitate to declare war upon the United Provinces in case the latter should formally accede to the maritime association. At the same time Ambassador Yorke was said to have insinuated at the Hague that if the Netherlands should abstain from entering into close relations with the northern powers, the king would unofficially issue orders by which the molestation of Dutch commerce would be discontinued.[3] At the beginning of August Lord Stormont asked the Dutch envoy if he had news from his government. The English cabinet, he stated, had been informed that the Republic intended to send a declaration to the British court,

[1] J. Adams to the President of Congress, July 14, 1780 (Wharton, III, 857).
Adams spelled the names of the two plenipotentiaries Baron de Waassenaar Starrenburg and Baron van Heckeren de Brantrenburg.
[2] Dumas to the President of Congress, July 15, 1780 (Wharton, III, 861); Carmichael to the Committee of Foreign Affairs, September 9, 1780 (ibid., IV, 53).
[3] Thulemeier to Frederick II, August 1, 1780 (Bancroft MSS., Prussia and Holland).

similar to that of Russia. He had, therefore, instructed Yorke to make known to the States General how offensive such a step must be to England, because the Republic was bound by engagements rather to assist Great Britain than to oppose her. If she should follow Russia's example, this would necessarily create the impression that she was inclined to be unfriendly toward England. The latter, Stormont concluded, earnestly wished to continue the old friendship with the United Provinces.[1]

Regarding the instructions given to the plenipotentiaries, Starrenberg and Brandsenburg, we learn from Thulemeier that the two Dutch noblemen, after their arrival at St. Petersburg, were to ask first for the guarantee, not as an essential condition, but as a favor, and then to inform the empress that the States General were very willing to make the required declaration to the belligerent powers. To render this step more effective, the United Provinces, however, wished to enter into closer relations with Russia. The plenipotentiaries were also to announce that the States General proposed to Catherine to unite the naval forces of the neutral powers and to put them into service for the protection of their subjects by forming several squadrons according to the pleasure of the empress.[2]

The Republic began now to put her navy on a better footing by manning her war vessels. According to John Adams, who had arrived at Amsterdam in a private capacity, she had great success in this because large premiums were paid for seamen, as much as sixty ducats a man. As an outward sign of the friendly relations existing between the United Provinces and Empress Catherine, Russian men-of-war arrived in Dutch waters and anchored off the Texel, their officers going ashore and visiting Amsterdam.[3] The English ambassador at the Hague now became more in-

[1] Welderen to the States General, August 4, 1780 (Bancroft MSS., America, Holland, and England).
[2] Thulemeier to Frederick II, August 11, 1780 (Bancroft MSS., Prussia and Holland).
[3] J. Adams to the President of Congress, August 14, 1780 (Wharton, IV, 29).

sistent. He continued to disapprove strongly of sending plenipotentiaries to St. Petersburg, suggesting that the differences between Great Britain and the United Provinces could easily be adjusted by nominating one or two plenipotentiaries for direct negotiations with the English ministry at London.

In the meantime the Dutch ambassadors had arrived at the Russian capital and were received by the empress. They thanked her on account of their masters and said that the Republic was not only willing to accede to the concert proposed for the protection of navigation, but to leave entirely to her discretion by what means it was to be effected. During the first interview the guarantee regarding the Dutch possessions in the East and West Indies was not mentioned.[1] Soon despatches arrived at the Hague from the plenipotentiaries stating that a convention was being negotiated upon the basis of that concluded by the northern courts with two additional articles. One was concerning the restitution of the ships which Great Britain had taken from the Republic, the other provided that in case the United Provinces should be attacked or molested because of their accession to the Armed Neutrality, the other parties to it would be bound to defend them. In a separate article it was to be stated that the aim of the maritime league was to bring about peace between the belligerents.

When John Adams heard of this, he said that he would dread any interposition of the assembly at St. Petersburg, since it was impossible for them to understand the subject, and America was not represented. "If they should take into consideration the affair of peace," he continued, "I should be apprehensive of some recommendations to save the pride, or what they would call the dignity, of England, which would be more dangerous and pernicious to America than a continuance of the war."

The reports from St. Petersburg showed also that Eng-

[1] Thulemeier to Frederick II, September 26, 1780 (Bancroft MSS., Prussia and Holland); J. Adams to the President of Congress, September 28, 1780 (Wharton, IV, 72).

land was still very active in her efforts to prevent the accession of the United Provinces to the northern league. The ministers plenipotentiary learned from the Russian minister that Ambassador Harris had taken steps in this direction. He was said to have informed Catherine that his court would respect the Armed Neutrality of the northern powers, provided that the United Provinces should not be admitted to it.[1] In fact, Sir James had received instructions from Lord Stormont, dated September 19, to use his influence with the empress in order to prevent the accession of the Dutch. Harris pointed out to Prince Potemkin that the empress should see while it was yet time "the dangers to which she exposed England, the difficulties in which she would involve herself, and the ruin to which she devoted Holland, if she joined with the Dutch in support of their unjust claims and ungrateful conduct."[2]

The Dutch plenipotentiaries consequently advised their government not to expect that, by delaying a final resolution or by further representations, anything could be gained. The only possibility of admission to the Armed Neutrality, they declared, lay in a quick decision.[3] No further mention was made of the guarantee. It had become known toward the end of September that Catherine had not only refused to grant it, but had demanded, as condition of the admittance of the Dutch, that the Republic should first make the declaration to the belligerents which Russia had presented to them in March. This attitude of the empress caused great disappointment and discouragement in the United Provinces. Amsterdam, however, supported by Vauguyon, adhered to the plan of becoming a member of the northern alliance.[4]

[1] Dumas to Franklin, October 3, 1780, and J. Adams to Dumas, October 4, 1780 (Wharton, IV, 76–78).

[2] Harris to Stormont, October 6/17, 1780 (Malmesbury, Correspondence, I, 337).

[3] Secret Resolutions of the States of Holland, October 13, 1780 (Sparks Dutch Papers); Carmichael to the Committee of Foreign Affairs, October 15, 1780 (Wharton, IV, 99, 100).

[4] Colenbrander, Patriottentijd, I. 181.

It was most important for England to prevent the accession of the Dutch to the Armed Neutrality, otherwise it would be difficult to cut off the providing of France and Spain with naval stores and ship timber, which were not considered contraband by the neutral league. For this reason war had to be declared upon the Republic before she presented to the British government the declaration demanded by Russia. Now was the time for England to act, because it became evident that having grown desperate the Dutch would join the league without their East and West Indian possessions being guaranteed to them by Russia and the alliance. It would have been foolish for the English to state the actual reason which led them to this step, because Russia and the northern powers might have sided with the Republic. Most welcome to them, therefore, was an occurrence which furnished a pretext for hostilities. This was the capture of the person and papers of Laurens, the former president of the Congress of the United States.

Henry Laurens was appointed to "negotiate a foreign loan" and at the same time as "a commissioner to negotiate a treaty of amity and commerce with the United Provinces of the Low Countries," his instructions being dated October 26, 1779.[1] His commission was resolved upon November 1, 1779, but adverse conditions had kept him from sailing until early in the fall of 1780.[2] On September 3, while the packet on which he was a passenger was off the coast of Newfoundland, she was captured by the British boat "Vestal." Laurens threw the bag containing his papers overboard, but the weight affixed to it proved insufficient, and bag and papers fell into the hands of the British.[3] Laurens

[1] Secret Journals of Congress, II, 283, 285, 290, 314, 320 (Wharton, III, 394).

[2] Laurens to the Committee of Foreign Affairs, January 24, February 14 and 24 (Wharton, III, 468, 494, 516; ibid., IV, 56, footnote).

At what time and from what place Laurens sailed does not appear from his correspondence.

[3] Laurens to the Committee of Foreign Affairs, September 14, 1780 (Wharton, IV, 56); J. Adams to the President of Congress, October 31, 1780 (ibid., IV, 109, 110).

was taken to England in the sloop of war "Fairy" and imprisoned in the Tower of London.[1] Among the papers were letters from J. D. van der Capellen and others, pointing out the friends of the American cause in the United Provinces, and above all the draft treaty arranged by William Lee and Neufville in 1778.[2] This draft treaty was deemed sufficient to furnish a pretext for war, if need be, and England determined to use it to the best advantage. There was no reason to suppose that "the Northern Powers would espouse a quarrel founded on an intrigue unknown to them."[3]

The English government sent the papers to Yorke, who said that he was not surprised at the facts they revealed, since he always suspected intrigues between France, Amsterdam, and the rebels in America. He consulted Griffier Fagel, who agreed that the ambassador should communicate the documents to Prince Louis of Brunswick. With the latter Yorke was especially satisfied, because Brunswick promised to cooperate with him, not only in encouraging the stadtholder, but also in drawing every advantage from the discovery in the interest of England. Acting upon the duke's advice, Yorke, on October 16, informed the Prince of Orange of what had happened, finding him, however, already prepared by Brunswick. The stadtholder was of Yorke's opinion that, if the draft treaty had been an act of the States General, it should be considered as an aggression and a declaration of war. But even as it was, William agreed that the discovery would justify every measure England might take against the United Provinces "without any

[1] Extract of letters from Louden to Dumas, October 6, 10, and 17, 1780 (Wharton, IV, 84, 85).

[2] Above, pp. 89 ff.

[3] Yorke to Stormont, October 17, 1780 (Sparks MSS., LXXII). Van der Capellen in a letter to John Adams, dated November 28, 1780, judged the conduct of the English rightly when he stated that the object of the English was "de nous [the Dutch] entrainer en guerre *avant* d'être admis à la Neutralité armée, afin de donner occasion aux Puissances confederées de pouvoir nous refuser comme n'aiant pas la qualification requise, savoir d'être *une puissance neutre*" (Beaufort, Brieven van der Capellen, 206).

other neutral power being concerned in it." The prince did not doubt that this "lucky" discovery would greatly assist the cause of Great Britain. Yorke thought that the affair could not fail "to occasion a wonderful alarm" in the United Provinces, and that the enthusiasm existing there for the alliance of the Armed Neutrality would be greatly reduced, which would in itself be a great point, "if nothing else happens." It would, he said, also thoroughly open the eyes of the stadtholder.[1]

Brunswick advised the Prince of Orange not only to communicate the discovery to the burgomasters of Amsterdam, but to make it as widely known as possible. A good way to proceed would be to inform the burgomasters first only of the draft treaty and a letter of Mr. de Neufville upon the subject. The other papers should be kept in reserve in order to frighten those concerned with the fear of additional knowledge which the prince might have of their plot. The stadtholder should then ask categorically whether the city of Amsterdam had authorized Pensionary van Berckel to negotiate such a treaty with the English colonies in America as an independent state, although they were not recognized by the United Provinces nor by most of the other nations. He could not believe, the prince was to declare, that they would have done this without the knowledge of the other members of the state and of the stadtholder. In order to draw the most advantage from the discovery, Brunswick told Prince William that other provinces ought to be speedily informed of it, which would be easy since all were assembled together. This might perhaps be the best means of preventing the Dutch declaration regarding the Armed Neutrality from being submitted to the belligerent powers. The discovery might serve as an argument to save the United Provinces from the embarrassing position in which France had placed them. He did not doubt that the English government had notified Ambassador Harris at St. Petersburg, who would make good use of it with

[1] Yorke to Stormont, October 17, 1780 (Sparks MSS., LXXII).

the empress. As a measure of precaution Duke Louis recommended that the originals of the papers should not be intrusted to Temminck or the other magistrates of Amsterdam, but that only copies be transmitted.[1]

The stadtholder, acting upon this advice, summoned Temminck for an explanation of the matter. The burgomaster replied that Berckel had only carried out the instructions of the regency of Amsterdam.[2] A direct trade with the United States must be of the greatest advantage to the United Provinces; besides, the negotiations had only been casu quo. It was an obsolete transaction which was without effect. It had been occasioned by intelligence received at Amsterdam that the English commissioners sent to America had been directed to exclude the United Provinces from trading with America in case a reconciliation should be effected. Other countries would have been admitted to such commerce.[3] William V told Temminck then that the matter would be laid before the States of Holland on the same day, and demanded that the pensionary should not be present during that meeting of the provincial assembly.[4] Before proceeding to the latter the stadtholder handed the papers to the secret committee of the States General, where they were taken ad referendum to be communicated to the provinces.[5]

The States of Holland declared that they had no knowledge of the matter and demanded an explanation from the city of Amsterdam.[6] On October 25 the answer from Am-

[1] Brunswick to the Prince of Orange, October 17, 1780 (Nijhoff, Brunswijk, 320, 321).

[2] Above, p. 89.

[3] Thulemeier to Frederick II, October 24, 1780 (Bancroft MSS., Prussia and Holland); Yorke to Stormont, October 24, 1780 (Sparks MSS., LXXII).

Yorke, in concluding his report, remarked, "From this narrative, which contains a full avowal and even a justification, it is evident to what a pitch the tyranny of Amsterdam has risen, and what may be expected from them if they continue to rule."

[4] Yorke to Stormont, October 20, 1780 (Sparks MSS., LXXII).

[5] Secret Resolution of the States General, October 20, 1780 (Sparks Dutch Papers).

[6] Secret Resolutions of the States of Holland and Westfriesland, October 20, 1780 (Sparks Dutch Papers).

sterdam, dated October 24, practically repeated the statement made by Burgomaster Temminck to the Prince of Orange. The assembly of Holland transmitted the report to the States General, by whom it was referred to the provinces for deliberation.[1] Yorke presumed that the States General would finally disavow the conduct of the city of Amsterdam, but in his opinion this would not be giving the satisfaction to which England was entitled. He proposed, therefore, that satisfaction should be formally demanded, blaming only Amsterdam for this incident. In case of a refusal, or if an answer should be withheld, Amsterdam might be separated from the rest of the Republic in every respect, just as should seem best to England. Ships belonging to Amsterdam might be brought up and retained until satisfaction was given, or the Texel and Vlie, forming the gates to the Zuider Zee and consequently to Amsterdam, might be blockaded, while all the other ports of the United Provinces should remain open. An immediate demand for satisfaction, Yorke expected, would have a great influence on the northern powers, since he thought that they would not be inclined to quarrel with England for the sake of the Dutch.[2]

In execution of this scheme, the ambassador on November 10 presented a memorial to the States General, setting forth that the alliance of Great Britain and the United Provinces contributed to the happiness of the two nations, but the natural enemy of both wanted to destroy it and was supported in this effort by a faction in the Republic. On the other hand, the king's requisition of the stipulated assistance remained without effect, doubtless because of the influence of a dominant cabal. The king, however, hoped that the States General would return to the system which was founded by the wisdom of their ancestors, and had charged his ambassador to present the accompanying decla-

[1] Secret Resolutions of the States General, October 27, 1780 (Bancroft MSS., America, Holland, and England; Sparks MSS., CIII; Sparks Dutch Papers); J. Adams to the President of Congress, October 27, 1780 (Wharton, IV, 106, 107).

[2] Yorke to Stormont, October 31, 1780 (Sparks MSS., LXXII).

ration to Their High Mightinesses, the reply to which would be regarded as the touchstone of their intentions and their sentiments toward the English. The king asked of the States General a formal disavowal of the conduct of Amsterdam regarding the negotiations with America, and the exemplary punishment of the Pensionary van Berckel and his accomplices. In case the States General should refuse to comply with this request or remain silent, the king would be obliged to take such measures as the maintenance of his dignity required.[1]

John Adams, learning the contents of the English ambassador's memorial, observed, " Whether Sir Joseph Yorke, after 20 years residence in this Republic, is ignorant of its constitution, or whether, knowing it, he treats it in this manner on purpose the more palpably to insult it, I know not." To Adams, who seems not yet to have been aware of its purpose, this English measure must have been surprising. The sovereignty of the United Provinces resided in the States General, but Their High Mightinesses who assembled at the Hague were only the deputies. The real States General, in his opinion, were the regencies of the cities and the bodies of nobles in the several provinces. The burgomasters of the city of Amsterdam, called the regency, were therefore an integral part of the sovereignty. What would be said in England if the Dutch envoy at the court of London had handed a note to the king, in which any integral part of the sovereignty of Great Britain, as the whole House of Lords, or the whole House of Commons, was charged with conspiracy, factions, cabals, and sacrificing of general interests to private views, and had demanded exemplary punishment?[2]

[1] Sparks Dutch Papers; Bancroft MSS., America, Holland, and England.

[2] J. Adams to the President of Congress, November 16, 1780 (Wharton, IV, 153, 154).

On November 20, 1780, however, Adams wrote to van der Capellen that the King of England would commence hostilities against the United Provinces on pretense of an insult committed by the negotiation of Amsterdam with the United States (Wharton, IV, 157; Beaufort, Brieven van der Capellen, 201).

The memorial, made public in the Dutch gazettes by Yorke, was very much resented in the United Provinces, causing there considerable alarm.[1] Even the British partisans did not, in general, agree with it. The burgomasters of Amsterdam issued a detailed pamphlet in which they tried to justify their action,[2] being successful at least as far as the broad public was concerned. Yorke was not generally thought to be the author of the memorial, but Lord Stormont. It was believed that the former had in vain made representations in London predicting that such a step would cause too great dissatisfaction in the United Provinces. The fact was, however, that the ambassador, far from warning against strong measures, was the motive power behind the hostile attitude of the English government toward the Dutch Republic. Grand Pensionary van Bleiswijck rightly suspected that England was using this case as a means to prevent the accession of the United Provinces to the Armed Neutrality.[3]

Francis Dana, who, on a short visit to the United Provinces for the purpose of raising money, happened to be in Amsterdam with John Adams,[4] shared the same opinion. Holland and three other provinces had already declared for unconditional adhesion to the pact, while two more pleaded that the Dutch territories in both Indies should be previously guaranteed, without, however, making this an absolute condition. The only province which was against the measure was Zealand.[5] This Dana ascribed to the unlimited influ-

[1] Thulemeier to Frederick II, November 11, 1780 (Bancroft MSS., Prussia and Holland); Yorke to Stormont, November 14, 1780 (Sparks MSS., LXXII).

[2] Yorke to Stormont, November 3, 1780 (Sparks MSS., LXXII); Thulemeier to Frederick II, November 3, 1780 (Bancroft MSS., Prussia and Holland); Dana to Jonathan Jackson, November 11, 1780 (Wharton, IV, 151).

[3] Thulemeier to Frederick II, November 14, 1780 (Bancroft MSS., Prussia and Holland).

[4] Wharton, I, 574.

[5] When the wording of the declaration to the belligerent powers was deliberated upon by the States General, the deputies of Zealand protested (Secret Resolution of the States General, November 20, 1780, in Sparks MSS., CIII; Bancroft MSS., America, Holland, and England).

ence exercised there by the Prince of Orange, but possibly the other six states might accede without Zealand. The hesitation of the Republic was due to her not being prepared for war, since only twenty-six of the fifty-two war vessels voted for were ready for sea.[1] At the beginning of November the report of the burgomasters of Amsterdam regarding the draft treaty had been examined by the states of the province of Holland in a secret session, and the action of Amsterdam disavowed, but a final resolution was postponed.[2]

In the meantime, the French party was not inactive, as may be seen from a letter of Sir Joseph Yorke to his government, in which, by the way, he accused Prussia of taking part in the intrigues. "It is notorious," he said, "that the Cabal, supported by France and Prussia, is as inveterate as it is active, and that at the bottom all it does and all it means, is to gain time to be better prepared, and if possible, to draw the Northern League into the snare, by making their particular aggression a common cause with the pretended armed neutrality."[3] Utmost vigilance was recommended to the ambassador by the authorities in London. It would be essential, he was told, to watch John Adams as narrowly as possible, because it was suspected that he had at least some of the powers which were given to Mr. Laurens.[4] On November 20, the States General resolved to accede to the Armed Neutrality without the stipulation of a guarantee regarding the East and West Indian possessions. This decision was reached by a majority of votes, namely, those of Holland, Utrecht, Friesland, Overyssel, and Groningen against Guelderland and Zealand, the latter still insisting on the guarantee clause, though they agreed to the accession in principle.[5]

[1] Dana to Jonathan Jackson, November 11, 1780 (Wharton, IV, 152).
[2] Secret Resolutions of Holland and Westfriesland, November 3, 1780 (Sparks Dutch Papers).
[3] Yorke to Stormont, November 21, 1780 (Sparks MSS., LXXII).
[4] Stormont to Yorke, November 21, 1780 (Sparks MSS., LXXII).
[5] Gazette de Leyde, XCIV, November 24, 1780; J. Adams to the President of Congress, November 25, 1780 (Wharton, IV, 160).

John Adams considered it a mistake for the Prince of Orange to have produced Mr. Laurens' papers; and particularly was the way in which he did it unfortunate, since it was "justly offensive" to the United States. Yorke would have been the proper authority to submit the papers, for the prince in so doing appeared to be an instrument of the English ambassador, which did not at all recommend him to the Dutch nation.[1] Adams' remarks were made shortly after the States of Holland had passed a resolution which disapproved and disavowed the conduct of the magistrates of Amsterdam.[2] This resolution was passed by the States General without change and communicated to the English ambassador[3] by the Grand Pensionary in writing.[4]

Both resolutions failed to provide for the punishment of van Berckel, which the English memorial had demanded. Yorke answered, therefore, that the resolutions did not contain the satisfaction demanded, but that he imagined the king would look upon this decision of the States General as a first step toward a compliance with his demands. Regarding the accession of the Republic to the Armed Neutrality the ambassador reported that the messenger who was carrying the resolutions of the States General to St. Petersburg had been recalled by an express courier. Sir Joseph also learned that a letter from the Grand Pensionary had been handed to the messenger enclosing the resolution of the States of Holland upon the "American intrigue." The matter, he said, was represented in such a way that it must appear as if all the satisfaction necessary had been given to Great Britain. The courier was ordered to stop at the village of Voor-

[1] J. Adams to the President of Congress, November 25, 1780 (Wharton, IV, 161).

[2] Resolution of Holland and Westfriesland, November 23, 1780 (Groot Placaatboek, IX, 30; Sparks Dutch Papers; Sparks MSS., CIII; Bancroft MSS., America, Holland, and England); Thulemeier to Frederick II, November 24, 1780 (Bancroft MSS., Prussia and Holland); Yorke to Stormont, November 24, 1780 (Sparks MSS., LXXII).

[3] Secret Resolution of the States General, November 27, 1780 (Bancroft MSS., America, Holland, and England).

[4] Thulemeier to Frederick II, November 28, 1780 (Bancroft MSS., Prussia and Holland).

schooten and wait there, in order to receive the resolution of the States General upon the same subject for transmission to the Dutch plenipotentiaries at St. Petersburg.[1]

At the Rusian court the English intrigue was carried on with increasing zeal, but apparently without success. Count Panin, according to Sir James Harris, was "working every engine" to have the Dutch admitted to the Armed Neutrality. The British ambassador suspected that Panin was concealing the truth from Catherine, but hoped that the empress would not admit the United Provinces, unless all seven agreed in their opinion.[2] That the decision of the States General would not be unanimous Harris knew from Yorke, who kept him informed of the proceedings at the Hague. Sir James tried also to gain an ally in the Austrian envoy at St. Petersburg. In a letter addressed to the English ambassador at Vienna, Harris expressed his confidence that England's effort would succeed in cutting up by the roots the convention of the Armed Neutrality by taking from the United Provinces their title of neutrals, for the Dutch were an "ungrateful, dirty, senseless" people. He asked his colleague to prevail upon the court of Vienna to instruct Cobenzel, the Austrian representative at St. Petersburg, to assist Harris in influencing Catherine against the Netherlands.[3]

It remained no secret that Harris was instructed from London to declare to the empress that the Dutch by their negotiations with America had departed from neutral

[1] Yorke to Stormont, November 28, 1780 (Sparks MSS., LXXII). John Adams, who in this instance was not so well informed as Yorke, thought that the recalling of the courier was intended for some change in the instructions sent to the Dutch plenipotentiaries in Russia, but, he said, it was unknown what alteration was to be made (J. Adams to the President of Congress, in Wharton, IV, 175).

[2] Harris to Stormont, November 18/28, 1780 (Malmesbury, Correspondence, I, 342).

The view that Catherine would not admit the United Provinces on the ground that the vote had not been unanimous was shared by Yorke (Yorke to Stormont, December 3, 1789, in Sparks MSS., LXXII).

[3] Harris to Sir Robert M. Keith, November 29, 1780 (Malmesbury, Correspondence, I, 345).

ground and should, therefore, not aspire to enjoy the same prerogatives as Russia, Sweden, and Denmark.[1] Yorke warned his government that too much care and pains could not be employed to keep the United Provinces from acceding to the Armed Neutrality.[2] All these efforts showed how great the apprehension of Great Britain was that the Dutch would escape her control.

At this time Sir Joseph Yorke presented a new memorial to the States General in which he insisted upon a satisfactory answer to his previous memorial regarding the draft treaty with the United States. The king, he said, put the punishment of the culprits in the hands of the States General, and only in the last extremity would charge himself with it. It was, however, pointed out to the ambassador that the States General had no jurisdiction over the individual provinces, and that they must leave the matter to the province of Holland.[3]

John Adams remarked regarding Yorke's action that a widening of the breach with the Republic by England did not seem probable, but if a rupture should occur, it would do no harm to the United States for Great Britain to have more enemies to contend with.[4] Even Yorke himself observed that the Dutch, in general, thought a serious quarrel with England impossible.[5] The Prince of Orange was in despair. At least so it seemed from a report of the English ambassador in which he stated that William V acted as if he had fallen into the hands of Great Britain's enemies.

[1] Thulemeier to Frederick II, December 1, 1780 (Bancroft MSS., Prussia and Holland).

[2] Yorke to Stormont, December 8, 1780 (Sparks MSS., LXXII).

[3] Gazette de Leyde, CI, December 19, 1780; Yorke to Stormont, December 12, 1780 (Sparks MSS., LXXII; Bancroft MSS., America, Holland, and England); Resolution of the States General, December 12, 1780 (Sparks Dutch Papers); Thulemeier to Frederick II, December 15, 1780 (Bancroft MSS., Prussia and Holland); J. Adams to the President of Congress, December 18, 1780 (Wharton, IV, 197).

[4] J. Adams to Cushing, December 15, 1780 (Wharton, IV, 193).

[5] Yorke to Stormont, December 3, 1780 (Sparks MSS., LXXII).

Yorke, as usual, talked very frankly to him about his conduct and that of the states toward England, avoiding, however, mentioning the negotiations with Russia and with the other powers of the Armed Neutrality.[1]

A few days after Sir Joseph had delivered his memorial, he was informed by the States General that it had been referred to the provinces and that a definite answer would be given as quickly as the constitution of the government would allow.[2] About the same time the British cabinet, learning on December 16 of the Dutch resolution to join the neutral league,[3] took final steps by directing Yorke to quit the United Provinces without taking leave.[4] This meant the severance of all diplomatic relations with the Republic, a measure almost equalling a declaration of war, and the friendship which had existed between the two countries for 106 years would cease.[5] However, the transmission of the orders to Yorke met with some delay, owing to rough sea, and in the meanwhile the Dutch envoy in London, informed by Stormont, reported to the States General the resolution taken by the English government, but his missive also was late in reaching the Hague. Welderen added that he was prepared to leave England as soon as he should receive orders to that effect from the States General, and that he would not go to court any more.[6]

This last English action was in keeping with the policy which the British government had followed ever since the American Revolution had begun. This was to render the Dutch as far as possible unable to assist England's enemies.

[1] Yorke to Stormont, December 12, 1780 (Sparks MSS., LXXII).
[2] Resolution of the States General, December 15, 1780 (Bancroft MSS., America, Holland, and England).
[3] Mahan, Influence of Sea Power, 406.
[4] Stormont to Yorke, December 16, 1780 (Sparks MSS., LXXII).
[5] Kampen, Verkorte Geschiedenis, II, 295; Doniol, Histoire, IV, 516; Davies, History of Holland, III, 463.
[6] Welderen to the States General, December 17 and 19; both letters were received at the Hague on December 25 (Bancroft MSS., America, Holland, and England); Resolution of the States General, December 25, 1780 (Sparks MSS., CIII).

Thus far England had been only partly successful, but now that all friendly relations between the two countries had ceased it would be easier to check the commerce and navigation of the United Provinces, which had proved so harmful to the English cause. There was, however, no time left for Great Britain to take this measure, since the accession of the Republic to the league of the Armed Neutrality was near at hand.[1]

The last Dutch courier had brought full powers to the commissioners of the United Provinces at St. Petersburg to accede on behalf of the States General to the league as proposed by the Russian court. The Russian envoy learned that as soon as everything was agreed upon the Dutch plenipotentiaries would produce credentials as ambassadors and sign the Convention under that title. They were also instructed to propose a treaty of commerce, on terms highly advantageous to Russia. Both of the commissioners had constantly been in conference with Panin, and, according to Harris, had found in him more facility and zeal than they could even have hoped for, since the Russian minister intended to urge the empress to lose no time in forming the connection which he represented to her as most salutary to her empire and most conducive to her glory.[2] Catherine agreed, and the plenipotentiaries signed on January 4, the acts then being dispatched to be ratified by the States Gen-

[1] E. Lusac, R. Vryaarts openhartige Brieven, I, 20.

For more than two years van der Capellen had asserted that England, in pursuance of her interests, needed a war with the United Provinces, and that she would have it (Van der Capellen to Vauguyon, in Beaufort, Brieven van der Capellen, 241).

[2] Harris to Stormont, December 8/19, 1780 (Malmesbury, Correspondence, I, 347, 348).

Harris' report of a conversation which he had with the empress is interesting. After he had explained to her why the Armed Neutrality was hurtful to England, Catherine asked him in return, "You molest my commerce; you hold up my vessels; I attach to that a particular interest; my commerce is my child, and you want me not to be angry?" (Harris to Stormont, December 13/24, 1780, in Malmesbury, Correspondence, I, 355). It was evident that Harris' mission had been a complete failure, at least as far as the formal conclusion of the Armed Neutrality was concerned. It was different regarding the execution of its principles.

eral.[1] That Russia, however, would give the Dutch no further support was the firm belief of Sir James Harris.[2]

On December 21, 1780, the States of Holland resolved that the provincial court of Holland should decide whether the papers taken from Laurens contained anything that, according to the constitution of the United Provinces, would justify criminal procedure against the burgomasters of Amsterdam and their pensionary.[3] On the following day the States General passed this resolution without change and Yorke was informed that only the States of Holland were competent in this matter.[4] Sir Joseph refused to accept this action, and suggested that the States General should transmit it to his court through Count van Welderen.[5]

Yorke received his letter of recall on December 24 and left the Hague on the following morning for Rotterdam and Antwerp to proceed from there to England.[6] The States

[1] J. Adams to the President of Congress, February 1, 1781 (Wharton, IV, 244–248); Dumas to the President of Congress, January 23, 1781 (ibid., IV, 200); Secret Resolution of the States General, January 22, 1781 (Sparks MSS., CIII).

Harris reported to his government that he was not able to prevent the admission of the Dutch to the neutral league, since Potemkin acted too late upon his advice (Harris to Stormont, December 29, 1780/January 9, 1781, in Malmesbury, Correspondence, I, 371).

[2] Harris to Stormont, December 13/24, 1780 (Malmesbury, Correspondence, I, 349).

John Adams' opinion was directly opposite. He thought the confederated powers would easily see that the real cause of offence was not the Dutch-American draft treaty but the accession of the Dutch to the Armed Neutrality, and that they would assist the Netherlands (J. Adams to the President of Congress, December 25, 1780, in Wharton, IV, 210).

[3] Resolutions of Holland and Westfriesland, December 21, 1780 (Sparks Dutch Papers).

[4] Resolutions of the States General, December 22, 1780 (Bancroft MSS., America, Holland, and England; Sparks Dutch Papers).

[5] Yorke to the States General, December 22, 1780 (Bancroft MSS., America, Holland, and England); Resolution of the States General, December 23, 1780 (Sparks Dutch Papers); Dumas to the President of Congress, December 19, 26, 27 (Wharton, IV, 199).

[6] Yorke to Stormont, December 29, 1780 (Sparks MSS., LXXII); J. Adams to the President of Congress, December 26, 1780 (Wharton, IV, 211); Gazette de Leyde, CIV, December 29, 1780, Supplement.

Regarding a pension of £2,000, granted to Yorke, and Pitt's com-

General, on their part, instructed Welderen to return to the United Provinces, but to transmit, before his departure, to the English government the declaration of the United Provinces regarding their accession to the Armed Neutrality.[1] It could afford only small consolation to the Dutch that the King of France assured them he would protect their legitimate and innocent commerce. He expected in return, he said, that they would take the most efficient measures in order to have their subjects fulfil scrupulously the conditions which guaranteed the liberty of their commerce.[2]

On December 20, George III issued a manifesto, which was communicated to van Welderen on the following day. It contained all the real and pretended grievances of England against the United Provinces and was intended to veil the actual reason for England's attitude.[3] The king attributed the conduct of the Republic to the prevalence in the United Provinces of a faction which was devoted to France and was following the dictates of that court. After the commencement of the war with France his ambassador had been instructed to offer friendly negotiations to the States General in order to obviate everything that might lead to disagreeable discussions, but no attention was paid to Yorke's proposition of November 2, 1778. After Spain joined the war, the States General were asked to carry out their obligations in accordance with Article 5 of the perpetual defensive alliance between England and the United Provinces of March 3, 1678, providing that the party of

pliment to his ability as an ambassador, see: William Pitt, Chancellor of the Exchequer, in debate of March 6, 1783 (Register, London, 1783, Vol. IX, p. 416).

[1] Thulemeier to Frederick II, December 25, 1780 (Bancroft MSS., Prussia and Holland).

The Dutch declaration was delivered to the French government on December 19 (Berkenrode to the States General, December 21, 1780, in Bancroft MSS., America, Holland, and England).

The Prussian foreign ministers, Finckenstein and Hertzberg, were informed of the declaration by the Dutch envoy at Berlin, Count van Heiden, on December 20 (Bancroft MSS., Prussia and Holland).

[2] Appendix to a letter of Berkenrode to the States General, December 28, 1780. The Appendix itself is dated December 23, 1780 (Bancroft MSS., America, Holland, and England).

[3] Le Politique Hollandais, No. 1, Chapter II, 7.

the allies not attacked should break with the aggressor within two months after the party attacked required it. The Republic had within two years not furnished any assistance, nor even answered England's repeated demands. On the other hand neutrality had been promised to Great Britain's enemies and secret aid given to them by facilitating the carriage of naval stores to France. Shelter had been granted to John Paul Jones in the Texel, protection and assistance had been rendered to the American rebels in St. Eustatia, and finally the Dutch had drafted a treaty with the American government. As no satisfaction had been given, the king must get for himself that justice which was not otherwise to be obtained.[1]

When Franklin saw a copy of the document, he remarked: "Surely there never was a more unjust war; it is manifestly such from their own manifesto. The spirit of rapine dictated it, and in my opinion every man in England who fits out a privateer to take advantage of it has the same spirit, and would rob on the highway in his own country if he was not restrained by fear of the gallows."[2]

Count Welderen in execution of his instructions tried in vain to hand the Dutch declaration to the British government. Lord Stormont refused to receive him on the ground that, as a consequence of the manifesto of the king, the Republic had to be regarded "as being in war with England."[3] Welderen was therefore compelled to leave England without fulfilling his instructions.[4]

[1] Gazette de Leyde, No. I, January 2, 1781, Supplement; J. Adams to the President of Congress, January 1, 1781 (Wharton, IV, 219–221); De Vinck (Ostende) to States General, December 27, 1780 (Sparks Dutch Papers).

[2] Franklin to Dumas, January 18, 1781 (Wharton, IV, 240).

[3] Welderen to the States General, December 21 and 29, 1780 (Bancroft MSS., America, Holland, and England).

The causes and motives of George III's conduct were laid before the English Parliament in a message on January 25, 1781. In it, of course, the Dutch were represented as the aggressors, making a rupture with the United Provinces indispensable (Hansard, Parliamentary History, XXI, 960). A short account of the events preceding the rupture was sent by J. Adams to the President of Congress on January 5 and 15, 1781 (Wharton, IV, 228, 229, 234).

[4] Resolution of the States General, January 15, 1781 (Sparks MSS., CIII).

Harris remained firm in his belief that no harm would be done to England by Russia. Great Britain's enemies would never so far mislead Catherine as to make her believe that the support of the United Provinces was a casus foederis of the convention of the Armed Neutrality. The King of Prussia was moving heaven and earth to fix this idea in her mind, and, besides, was offering troops to the Dutch in any number, and money to the Danes in any amount, provided only that they should employ their ships against England.[1] The fact seems to have been that the Empress of Russia, at this time, was favorably disposed toward the Republic, while she was indignant at the attitude of Great Britain.[2] Harris tried every means to thwart the ratification by Russia of the convention with the United Provinces, but without success. He informed his government that he had been more lucky in preventing the immediate evils with which the accession of the Dutch threatened England. He had prevailed on Her Majesty to act only as a well-wisher to both countries, and to show that determination by holding out conditions "by no means dishonorable" to the English.[3]

[1] Harris to Keith, January 10/21, 1781 (Malmesbury, Correspondence, I, 376).

Prussia acceded to the Armed Neutrality on May 8, 1781. Thulemeier transmitted a copy of the treaty to the States General in August, 1781 (Thulemeier to Frederick II, August 21, 1781, in Bancroft MSS., Prussia and Holland).

[2] Thulemier to Frederick II, January 12, 1781 (Bancroft MSS., Prussia and Holland); Dumas to the President of Congress, January 23, 1781 (Wharton, IV, 200).

[3] Harris to Stormont, April 13/24, 1781 (Malmesbury, Correspondence, I, 403).

A curious diplomatic blunder of the United States of America should be mentioned here, namely, its request to be admitted to the neutral league. In execution of the resolution of Congress of October 5, 1780, John Adams on March 8, 1781, transmitted a memorial to the States General in which he said that the American Revolution had furnished the occasion of a reformation in the maritime law of nations of vast importance to a free communication among mankind by sea, and that he therefore hoped it might not be thought improper that the United States should become parties to it. Copies of this memorial were delivered by him to the representatives at the Hague of France, Russia, Denmark, and Sweden, and also to the pensionary of Amsterdam (Wharton, IV, 274, 275). Since the object of the convention of the Armed Neutrality was to guard the rights

The verdict which was pronounced by the provincial court of Holland on the action of Amsterdam caused much embarrassment. Van Berckel was acquitted, but the city of Amsterdam was declared guilty and criminal.[1] The French ambassador warned his Dutch friends not to adopt that declaration, because it would justify the hostilities of England, and the city of Amsterdam wrote to the Prince of Orange asking him to oppose the publication of the verdict.[2] Van Berckel sent an address to the States of Holland and Westfriesland in which he defended his honor and asked to have his innocence declared.[3]

The whole Dutch people were in a state of utmost consternation, since they were not at all prepared for war, although it had been threatening for a long time. On January 12, 1781, the States General resolved to distribute letters of marque to privateers and orders to their men of war to seize everything that they could belonging to the English. But there were no privateers ready and comparatively few war vessels,[4] while as early as the end of December, 1780, a great many English privateers had left Liverpool to capture Dutch vessels.[5] Here and there voices were

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of neutrals against belligerents and the United States was a belligerent power, the American proposition could not be complied with. Vauguyon refused to second Adams without express order from the French government (Vauguyon to Adams, March 14, 1781, in Wharton, IV, 300).

The Gazette de Leyde registered with satisfaction the failure of England to prevent the accession of the United Provinces to the Armed Neutrality (XXVII, April 3, 1781).

[1] J. G. Tegelaar to van der Capellen, March 21, 1781 (Beaufort, Brieven van der Capellen, 225).

[2] Thulemeier to Frederick II, March 27 and 30, 1781 (Bancroft MSS., Prussia and Holland).

[3] Resolutions of the States of Holland and Westfriesland, May 4, 1781; Thulemeier to Frederick II, May 8, 1781 (Bancroft MSS., Prussia and Holland).

[4] Dumas to the President of Congress, January 12, 1781 (Wharton, IV, 200); J. Adams to the President of Congress, January 14, 1781 (ibid., IV, 231).

The States General on January 26, 1781, issued orders forbidding the Dutch to export contraband of war to England or goods for the account of the English king and his subjects (Groot Placaatboek, IX, 109, 110).

[5] Tegelaar to van der Capellen, December 26, 1780 (Beaufort, Brieven van der Capellen, 222).

heard, including that of the government of Zealand, which pleaded for reconciliation with England, but petitions to this effect remained without consideration by the States General.[1] Others were hopeful that the United Provinces would be victorious in the end, though they might be defeated by Great Britain in the beginning and lose St. Eustatia together with other West Indian possessions.[2] It was thought throughout the United Provinces that the Republic would receive effective assistance from the neutral league.[3]

The Dutch press was a power of great influence in the Netherlands during the period under consideration and especially during the Dutch-English controversy.[4] Both parties, the Orangists as well as the Patriots, made the most intense use of it, in order to propagate their respective views. Its importance in the political development of the country equalled if not exceeded that of the political press of our own time. There were in existence two classes of literature of this kind, newspapers and sporadically issued pamphlets. Up to 1780 the Dutch newspapers had only registered the current events in a colorless way, but from then on they served party purposes more or less, their number at the same time increasing considerably. The majority of them were organs of the Patriots.[5] Many of the

[1] J. Adams to the President of Congress, January 15, 1781 (Wharton, IV, 232).

The Province of Zealand then declared her willingness to take part in the hostilities, but reserved to herself the right of demanding, from the other provinces, compensation for all the cost, losses, and damages which she might experience during the hostilities with England (Van der Spiegel, II, 4–11).

[2] Tegelaar to van der Capellen, December 26, 1780 (Beaufort, Brieven van der Capellen, 220–221).

[3] Gazette de Leyde, No. 1, January 2, 1781, Supplement.

[4] John Adams frequently made use of the Dutch press for furthering the American cause in the United Provinces. This was possible by the assistance of Cérisier, Dumas and others, without Adams' becoming known as the author (J. Adams to Livingston, September 4, 1782, in Wharton, V, 690–691).

[5] Perhaps one of the oldest Dutch newspapers, still in vogue at the outbreak of war between the United Provinces and England, was the "Nederlandsche Mercurius" (1756–1806). In a French spirit were published, from 1779, the "Lettres Hollandaises" (Dutch

pamphlets were edited anonymously and, consequently, exhibited a more violent character than the party newspapers, since their authors could not easily be brought to account. The distribution of these pamphlets in the United Provinces was usually effected as secretly as their publication, and they reached all classes of the population. At this period they grew like mushrooms and formed not only a potent factor in party controversies but tended to influence considerably the foreign policy of the Netherlands.

No doubt, the most famous of these pamphlets was the one entitled "Aan het Volk van Nederland" (To the People of the Netherlands).[1] Only recently has the author

Letters), a paper which originated in the French legation at the Hague. One of its editors was A. M. Cérisier, a clever author, entertaining close relations to the French ambassador. Its name was later changed to "Nouvelles Lettres Hollandaises" (New Dutch Letters), and from 1787 to "Le Politique Hollandais" (Dutch Politics), when Cérisier took the editing into his own hands. The most influential Patriot paper was probably "De Post van den Neder-Rhijn" (1780–1787), edited by Pieter 't Hoen, and read in thousands of copies. Van der Capellen and van der Kemp, regents of Amsterdam, and other Patriots contributed to it. To counteract it the Orangist van Goens, with the knowledge and support of the stadtholder, issued the "Ouderwetse Nederlandsche Patriot" (1781–1783). It was well written, but its edition did not exceed seven hundred copies and it had therefore soon to be discontinued (Blok, Geschiedenis, VI, 577; Colenbrander, Patriottentijd, I, 258). One of the most violent Patriot papers was the "Politieke Kruger," but it was issued only from September, 1782 (Blok, Geschiedenis, VI, 398). A periodical of vast importance which became popular in most European countries on account of its reliability was the "Gazette de Leyde," edited by Etienne and Jean Luzac, who inclined toward France and greatly aided the American cause.

The memory of Jean Luzac was honored by the Holland Society of Philadelphia when, in 1909, it sent as delegate a prominent member, the noted author of various books on Holland, Dr. William Elliot Griffis of Ithaca, New York, to Leyden in order to place there on the house once occupied by Luzac a tablet, bearing this inscription: "In grateful remembrance to Jean Luzac, friend of Washington, Adams, and Jefferson, champion of the truth and justice of the cause of American independence in the Gazette de Leyde. Erected by the Holland Society of Philadelphia, 1909" (Washington Sunday Star, October 24, 1909, Part 2).

[1] This pamphlet is not to be confounded with another one of almost the same title: "Aan't Volk van Nederland" ("of Bewijzen en Consideratien over de voordeelen der Negotie met de Noord Americaanen"), which, though written in favor of the Americans, was rather colorless. A great many of the pamphlets issued about this time were addressed "aan't Volk van Nederland," as, for example,

been discovered to have been van der Capellen, the untiring friend of the American cause.[1] This pamphlet was chiefly directed against the house of Orange, especially against William V, and its services consisted in diminishing the power of the English party, while it advanced the cause of the United States in the Netherlands.[2]

The most important pamphlet coming from the other side was van Goens' "Politiek Vertoog over het waar Systema van Amsterdam" (Political Argumentation regarding the true System of Amsterdam), dated March 11, 1781. It denounced the policy of Amsterdam as selfish, tending

"Antwoord van Pieter Dwars-Doelen Scheepstimmerman op de Werf Vrijheid en Eendracht . . . *aan't Volk van Nederland* in't algemeen en aan de inwoonders der Stad Amsterdam in het bijzonder," a pamphlet written against the English.

[1] Up to 1908 neither the Congress of the United States nor the American people in general had formally recognized the very valuable services which van der Capellen rendered to the struggling American colonies. It is owing to the Holland Society of New York and especially to one of its presidents, Mr. John R. van Wormer, chairman of the committee formed for the purpose, that this debt of honor was paid on June 6, 1908, by placing a commemorative bronze tablet on the walls of the house No. 12 Bloemendal Street, which van der Capellen and his wife occupied until shortly before his death in 1784. The tablet, which was unveiled by Mr. van Wormer on behalf of the Holland Society of New York under the auspices of the Dutch authorities, bears the following inscription: "Erected by the Holland Society of New York A. D. 1908 to Joan Derck van der Capellen tot den Pol, Ridder in de Ridderschap van Overyssel 1741–1784, in grateful recognition of the services rendered by him during the war of the Revolution on behalf of the United Colonies of North America, 1775–1783, which materially contributed toward the establishment of their independence as a nation."

Rev. Dr. William Elliot Griffis of Ithaca, New York, first suggested to the Holland Society the scheme as it was executed. A detailed report on the history of the van der Capellen tablet was published by the Holland Society of New York in 1909.

[2] Its effect is said to have resembled that of an electric shock. On September 25 and 26, 1781, it was spread through the principal Dutch cities and also through the country by van der Kemp, van der Capellen's friend (Adrian van der Kemp came later to America where he founded the town of Barneveldt, now Trenton, N. J., and surveyed the route of the Erie Canal. Griffis, Young People's History of Holland, 266). Although several individuals were employed for this purpose and $2500 offered for the discovery of author and publisher, the names of the author and his associates were not disclosed (Fairchild, van der Kemp, 54–57; Groot Placaatboek, IX, 409).

to make the rest of the country serve the particular interests of the great city. The pamphlet advocated severe measures against Amsterdam, and was originally intended only for a limited circle of readers, especially the regents of Dutch cities, but soon became known to the public in general, which received it in a very unfriendly manner. Amsterdam was praised by the people as the champion of progress, while the stadtholder was called the usurper of the rights of the people.[1] Van Goens became the object of severe attacks and was referred to as the enemy of his country. While his essay had been called forth by two pamphlets by one Hendrik Calkoen, strongly taking sides with Amsterdam,[2] a number of counter publications appeared, the consequence of the "Politiek Vertoog."[3]

Another pamphlet which cleverly represented the English views was the "Rechtsgeleerde Memorie" (Judicial Memorial).[4] The author tried to show that Yorke's accusations were well founded and that the English crown was

[1] Colenbrander, Patriottentijd, I, 258, 259.

[2] Q. N., Het Politiek Systema van de Regeering van Amsterdam, in een waar daglicht vorgesteld, en haar gedrag tegens de beschuldiging van den Ridder Yorke, bescheidenlijk verdeedigd in een' Brief aan een Heer van Regeering in Zeeland (The Political System of the Administration of Amsterdam, represented in true daylight, and her conduct modestly defended against the accusation of Sir Joseph Yorke in a letter to a gentleman of the Government in Zealand).

Q. N., Het Waare Dag-Licht van het Politiek Systema der Regeeringe van Amsterdam, uit de Vaterlandsche Historien opgehelderd (The true Daylight of the Political System of the Administration of Amsterdam, explained from the History of the Country).

[3] For instance:—

C. P., Le Voici of Pourtrait en Byzonderheeden, aangaande den Politiek-Vertoog-Schrijver Hijklof Michael van Goens (Behold him, or portrait and peculiarities concerning Rijklof Michael van Goens, the writer of the Politiek Vertoog). In this pamphlet van Goens was called a traitor.

C. P., Supplement de Le Voici, etc. This was a continuation of the foregoing pamphlet.

Brieven van Candidus, Betreffende den Schrijver en inhoud van zeker Geschrift, getiteld: Politiek Vertoog, etc. (Letters by Candidus, concerning writer and contents of a certain pamphlet entitled, etc.).

[4] Rechtsgeleerde Memorie, waarin onzijdig onderzogt word de gegrondheit der Klagten, etc. (Judicial Memorial, in which is impartially examined the justice of the complaints of the King of Great Britain, etc.).

justified in asking the punishment of the burgomasters and pensionary of Amsterdam. Nicolaus Bondt replied with a vigorous pamphlet, including also remarks in refutation of Goens' "Politiek Vertoog," without however producing any new ideas about the latter.[1] Even in England pamphlets appeared in defense of the course taken by Great Britain against the Netherlands. "L'Esprit du Sisteme Politique de la Regence d'Amsterdam, etc." (Spirit of the Political System of the Administration of Amsterdam) is an exemple. These pamphlets were translated into Dutch and distributed over the United Provinces.[2]

[1] De Eer der Regeering van Amsterdam verdedigt, etc. (Defence of the Honor of the Administration of Amsterdam).

[2] The title in Dutch was: De Geest van het Politiek Systema van de Regeering van Amsterdam, etc.

Only a few of the immense number of pamphlets which were published on the occasion of the breach between the United Provinces and England have been mentioned here in order to show, from the tone of the more important of them, their influence upon the events under consideration. The Public Library in New York City possesses a large and interesting collection of these pamphlets, the examination of which would form a study in itself, for which the author neither had the time, nor thought it expedient for the present purposes. Many of them seem to be rather absurd, written by incompetent and irresponsible persons.

Regarding the Dutch newspapers, periodicals, and pamphlets see also Blok, Geschiedenis, VI, 395–405.

CHAPTER VII.

The United Provinces and Great Britain as Enemies.

In Great Britain many voices were heard severely criticizing the government for breaking with the United Provinces. In the British Parliament the subject was taken up by the opposition with enthusiasm.[1] The States General, notwithstanding that the indignation of the Dutch at the attitude of the English cabinet was strong and general, were slow even in finding an answer to the complaints of Great Britain, not to speak of active measures. About the middle of February, 1781, the provincial States of Utrecht expressed their surprise at such inactivity, bringing the matter to a discussion in a secret session of the States General,[2] but it was almost the middle of March before a decision was reached. A declaration of the general government was then published and transmitted to every court.[3]

In this counter-manifesto the imputations of the English king were repudiated in a detailed recapitulation of the relations between the two countries since the beginning of the American Revolution. It was vigorously asserted that the United Provinces had remained neutral throughout the contest. They had prohibited the exportation of military stores to the English colonies in America and instructed all Dutch governors and commanders to refrain from acts which might be interpreted as involving an acknowledgment of American independence. The governor of St. Eustatia was called to account when accused of having violated these

[1] Debate in the House of Lords on the King's message relative to the rupture with Holland, January 25, 1781 (Hansard, Parliamentary History, XXI, 998–1103; Andrews, History of the War, IV, 119, 125; Fitzmaurice, Shelburne, III, 109–119).

[2] Secret Resolutions of the States General, February 16, 1781 (Sparks MSS., CIII).

[3] Secret Resolutions of the States General, March 12, 1781 (Bancroft MSS., America, Holland, and England).

orders. After the beginning of the Franco-English war, the British ports were filled with Dutch ships, taken and retained by England, although those vessels carried only goods which the treaties declared free. All their remonstrances regarding this breach of treaty had been of no avail. Even the Dutch flag had not been respected by England, as the Fielding-Bylandt incident showed. Neutral territory of the United Provinces, both in Europe and in America, had been repeatedly violated by Great Britain, especially the island of St. Martin in the West Indies,[1] for which offence not the slightest satisfaction had been offered. As Dutch commerce and navigation was thus in danger of being annihilated, the United Provinces acceded to the Armed Neutrality.

Explanations were also given in the counter-manifesto as to why the Dutch had not furnished assistance to England, and why John Paul Jones had been tolerated in Dutch waters. Subsidies were not given because the United Provinces did not find that their treaties with Great Britain compelled them to do so, and no hostile action had been taken by the Dutch authorities against the American sea-captain because existing regulations prevented the States General

[1] The governor of St. Eustatia reported, on August 12, 1780, the following incident, brought to his knowledge by a letter which he had received from the secretary of St. Martin, dated August 9, 1780:—

On August 9, 1780, an English squadron belonging to Admiral J. B. Rodney's fleet and consisting of one ship of the line and six frigates under the command of Captain Robinson anchored at St. Martin. Two of the officers visited the commander of that island, informing him that the squadron was charged to seize all North American vessels and their cargoes that might be found in the waters of the island. The commander's remonstrances against such hostile procedure were without avail. The island being literally defenceless, the English squadron found no further resistance in carrying out its orders. No harm was done to the inhabitants of St. Martin. Part of the squadron, on August 11, called also at St. Eustatia. The American vessels, however, which had happened to be there had left as soon as the incident at St. Martin became known, and the English vessels departed without hostilities.

Missive van Representant en Bewindhebberen der Westindische Compagnie, etc., October 10, 1780 (Sparks Dutch Papers); Nieuwe Nederlandsche Jaerboeken, 1780, p. 982; Resolution of the States General, November 20, 1780 (Sparks MSS., CIII); De Jonge, Geschiedenis, IV, 436.

from passing judgment upon his conduct before his arrival at the Texel. Moreover, the interests of the Republic did not make it desirable for her to meddle in a contest in which she was not obliged to take part. As to the draft treaty, found with Laurens, and the controversy to which it gave rise, the States General had disavowed the act, agreeably to the English desire, but they could not pronounce punishment upon the culprits because, according to the constitution of the United Provinces, this was not within their jurisdiction, but belonged to the province of Holland. Finally, George III had tried every means to prevent the accession of the United Provinces to the Armed Neutrality, and in reality the admission of the Republic to the northern league should be considered the cause of England's wrath.[1]

What made this counter-manifesto most remarkable was its publication at a time when Catherine II of Russia had just offered her services to the two countries for mediation in the interest of a peaceable adjustment of their mutual grievances.[2] However, many people in the United Provinces did not regret the rupture with England, but regarded war as a lesser evil than the continuance of the humiliations which the Republic had been suffering at the hands of Great Britain. They hoped that a future peace would

[1] Counter-Manifesto of the States General, March 12, 1781 (Sparks Dutch Papers; Gazette de Leyde, No. XXIII, March 20, 1781; Davies, History of Holland, III, 465).

[2] John Adams to the President of Congress, March 18, 1781 (Wharton, IV, 306–313).

It seems that John Adams misunderstood the situation when, a few days previous, he wrote the following: "They [the Dutch] are furious for peace. Multitudes are for peace with England at any rate, even at the expense and risk of joining them in the war against France, Spain, America, and all the rest. They are in a torpor, a stupor such as I never saw any people in before, but they cannot obtain peace with England on any other terms than joining her in the war, and this they will not, because they cannot do. I sometimes think that their *affections* would lead them to do it if they dared" (J. Adams to Dana, March 12, 1781, in Wharton, IV, 285). The many aggressions of England had little by little estranged most of her friends in the United Provinces, while the followers of France had increased correspondingly. There cannot have existed much affection for England in the United Provinces at this time.

render their country free and independent of foreign influences.[1]

The States General trusted that the northern powers would come to the assistance of the United Provinces. The Dutch plenipotentiaries at St. Petersburg and the envoys, van Lijnden at Stockholm and Bosc de la Calmette at Copenhagen, received instructions to present notes to that effect to the courts to which they were accredited. They were to express the confidence of the States General in the power, magnanimity and fidelity of their allies. The Dutch government had hesitated to join the alliance but had been justified in so doing since England's conduct toward the Republic had changed from the minute the intention became known in Great Britain. It was evident that the accession of the Republic to the Armed Neutrality was the real cause of the rupture between the two countries, and the States General hoped that their allies would make common cause with them. This was necessary because the Dutch navy was not in a condition to cope with that of England. This was due to the employment of such vast numbers of seamen in private bottoms that crews for war vessels were wanting. Prompt and efficient help was urged, especially by furnishing armed vessels to the United Provinces in excess of the ships which the allies had destined for the common defence.[2]

Frederick the Great felt so sure that Catherine would not abandon the United Provinces, but support them efficiently, that he thought he might safely guarantee such an attitude

[1] Thulemeier to Frederick II, January 12, 1781 (Bancroft MSS., Prussia and Holland).

[2] Resolution of the States General, January 12, 1781 (Sparks Dutch Papers).

Thulemeier reported that the States General had dispatched a courier to Copenhagen, Stockholm, and St. Petersburg, since they intended to demand the fulfilment of the obligations contracted in articles 6, 7, and 8 of the maritime convention (Thulemeier to Frederick II, January 16, 1781, in Bancroft MSS., Prussia and Holland).

See also Dumas' letter to the President of Congress, January 23, 1781 (Wharton, IV, 200).

of the empress.[1] Harris in St. Petersburg was of a different opinion. He, too, thought that Catherine would fulfil the obligations contracted by the convention of the Armed Neutrality, but that the States General could not claim any assistance from her, since the rupture between Great Britain and the United Provinces had no reference to that act.[2] From dispatches of Count Goertz, the Prussian envoy at St. Petersburg, we learn that the Russian government was much annoyed at the outbreak of war and greatly embarrassed regarding the course to be taken. At the same time, a side light is thrown upon the spirit in which Frederick received the news of the rupture between the two countries. "Because the English want war with all the world, they will have it!" he exclaimed, and showed the strongest marks of anger and disappointment. Panin, the Russian minister, also was shocked and confessed that he would never have thought England capable of this act. When asked whether Russia would be obliged to render assistance to her new ally, he answered evasively and seemed to be greatly embarrassed. A decision on this subject would be reached when the sentiments of the courts of Denmark and Sweden became known. It was understood, furthermore, that the empress had written to Frederick the Great about the difficulty in which she was placed by Great Britain and had asked him if Prussia would take sides with her, in case Russia should be drawn into war when aiding her ally.[3]

Catherine seems to have soon made up her mind how to proceed in the matter. The British minister at St. Petersburg wrote at the beginning of March that the empress remained firm in her resolution to exclude the United Provinces from the protection which the maritime league would

[1] Frederick II to Thulemeier, February 5, 1781 (Bancroft MSS., Prussia and Holland).

[2] Harris to Stormont, February 2/13, 1781 (Malmesbury, Correspondence, I, 385).

[3] Elliot to Stormont, February, 1781 (Malmesbury, Correspondence, I, 383). The English minister told Lord Stormont that these informations were confidentially given to him by a person who had perused Count Goertz's last dispatches.

have afforded them, if they had remained neutral. Beyond assisting the Republic with her good offices, the Dutch ambassadors were to be told that she could do nothing in the present situation.[1] Harris even urged the Russian government to have examined the instructions which were issued to the Russian sea commanders, "lest either wilfully or inadvertently their orders for protection should be extended to the Dutch ships." The Russian minister at the Hague learned that in Catherine's opinion the Dutch demand for assistance was premature.[2] Panin answered the Dutch plenipotentiaries that the United Provinces need not regret having joined the maritime league, but that they must make efforts themselves and not fall asleep. As the Republic was mostly concerned she ought to put herself in a position to effect her own defence, in order to repulse the enemy and to pursue the war with success.[3]

The United Provinces, however, were hopelessly torn by inner political and party strifes, and even now, in the hour of danger, little or no exertion was made for the safety of the Republic. The situation is vividly described by a letter of John Adams which he wrote in March from Leyden:—

"The nation has indeed been in a violent fermentation and crisis. It is divided in sentiments. There are stadtholderians and republicans; there are proprietors in English funds, and persons immediately engaged in commerce; there are enthusiasts for peace and alliance with England; and there are advocates for an alliance with France, Spain, and America; and there are a third sort, who are for adhering in all things to Russia, Sweden, and Denmark. Some are for acknowledging American independence, and entering into treaties of commerce and alliance with her; others start at the idea with horror, as an everlasting impediment to the return to the friendship and alliance with England; some will not augment the navy without increasing the army; others will let the navy be neglected rather than augment the army.

"In this perfect chaos of sentiments and systems, principles and interests, it is no wonder there is languor, a weakness, and irresolution that is vastly dangerous in the present circumstances of affairs. The danger lies not more in the hostile designs and exertions of the English than from seditions and commotions among the people,

[1] Harris to Stormont, February 26/March 9, 1781 (Malmesbury, Correspondence, I, 391).

[2] Thulemeier to Frederick II, March 9, 1781 (Bancroft MSS., Prussia and Holland).

[3] Same to same, March 13, 1781 (ibid.).

which are every day dreaded and expected. If it were not for a standing army, and troops posted about in several cities, it is probable there would have been popular tumults before now; but everybody that I see appears to me to live in constant fear of mobs, and in a great degree of uncertainty whether they will rise in favor of war or against it; in favor of England or against it; in favor of the prince or of the city of Amsterdam; in favor of America or against it."[1]

Frederick the Great was very indignant at the inactivity of the Republic, which he said should rather be called indolence. It was unpardonable to reduce the naval armament to six vessels when it should consist of twenty-one.[2] The state of the Dutch navy, in fact, was most deplorable, and what was worse, there was no hope of having it rebuilt very soon.[3] All Europe was surprised at the idleness of the Dutch, and public opinion gradually turned against them. The Prussian king thought the English party and the Duke of Brunswick responsible for this pusillanimity, which thwarted the best intentions of the government.[4]

During all this time while the Dutch contented themselves with quarreling as to whether the navy or army[5] should be increased, or whether the Duke of Brunswick or the Prince

[1] J. Adams to the President of Congress, March 19, 1781 (Wharton, IV, 314).

Great dissatisfaction was reported from Zealand and Friesland. They demanded peace with England on any condition, and even threatened to withdraw from the union (Thulemeier to Frederick II, May 8, 1781, in Bancroft MSS., Prussia and Holland); Resolution of the States General, January 22, 1781 (Sparks MSS., CIII).

On the situation see also Adams' letters of May 16 and 24, 1781 (Wharton, IV, 420, 431–433).

[2] Frederick II to Thulemeier, May 7 and 10, 1781 (Bancroft MSS., Prussia and Holland).

[3] J. Adams to the President of Congress, May 27, 1781 (Wharton, IV, 448–451).

[4] Frederick II to Thulemeier, June 18, 1781 (Bancroft MSS., Prussia and Holland).

[5] It may be mentioned here that petty German sovereigns offered their services to the United Provinces as they had done to Great Britain. The Prussian envoy at the Hague reported that the Duke of Württemberg, the Landgrave of Hesse-Darmstadt, and the Prince Bishop of Fulda had proposed to the States General a subsidy treaty, by which they would be obliged to furnish a certain number of troops to the United Provinces during the war with England (Thulemeier to Frederick II, February 23, 1781, in Bancroft MSS., Prussia and Holland).

of Orange himself was to blame for the pitiful position,[1] the English had been intensely active. They succeeded in making the North Sea and Baltic so unsafe for Dutch navigation that, in 1781, only eleven of their ships sailed through the Sound, while in 1780 about 2058 had passed there.[2] Still they were not satisfied, and looked about for further methods of hostility.

Before the beginning of the war the British government had asked Yorke's advice as to the best means for striking the Republic violently. They thought of destroying the Dutch navy and arsenals at home, but the ambassador dissuaded them from such a step because the shallowness of the coast rendered the Texel, where most of the naval craft of the United Provinces was stationed, and still more the inland waters comparatively secure against an attack. Furthermore it was to be feared that the English name would be hated in the Republic for centuries if the war should be carried into the heart of the country.[3] It would be much more effective to blockade the ports, seize as many as possible of the vessels of the Republic in the open sea and attack her especially in the West Indies, where immediate action should be taken because the West Indian possessions were her gold-mine for the moment, employing the greatest number of Dutch citizens. Yorke recommended the temporary capture of St. Eustatia, in order to cut off the intercourse between Amsterdam and the American rebels. According to rumor, ten or eleven men-of-war were preparing to sail for the West Indies, three of which would remain at St. Eustatia, while the rest were to be dispersed among the other possessions. It would be wise to strike the blow before those vessels should arrive.[4]

[1] Many thought that the Republic was approaching destruction, and that it would be wise to sell all private property, because it would in less than ten years lose more than half its value (Thuessink to van der Capellen, in Beaufort, Brieven van der Capellen, 260).

[2] Kampen, Verkorte Geschiedenis, II, 300.

[3] Colenbrander, Patriottentijd, I, 190.

[4] Yorke to Stormont, November 7, 1780 (Sparks MSS., LXXII).

The English cabinet seems to have agreed with Yorke, since George III at the same time that he issued his manifesto, had instructed Admiral Rodney to attack and seize the Dutch possessions in the West Indies. St. Eustatia and St. Martin were to be taken first, since it was thought that large quantities of provisions and other stores were there or upon their way thither. Major-General Vaughan was to assist in the invasion of the islands.[1] Rodney, who was in American waters with his squadron, received this order on January 27 and, assisted by General Vaughan, embarked the English troops immediately, sailing from St. Lucia in the Lesser Antilles on January 30. They arrived at St. Eustatia on February 3, occupying the island and seizing the Dutch man-of-war "Mars," commanded by Captain Bylandt, together with more than 150 vessels of all descriptions, including five American armed ships. Rodney informed the admiralty in London that all the magazines and storehouses

[1] George III's order to Rodney, December 20, 1780 (Rodney, Letters from Sir George Brydges, now Lord Rodney, to His Majesty's Ministers, 5).

Rodney's conduct relative to the capture of St. Eustatia was later severely criticized, and he had his correspondence published in order to show "that his Views were invariably directed, during the whole Period of his Command, to the Advancement of the Public Service, and the Glory and Prosperity of his Country." There were even officers in the English navy who were discontented with Rodney's conduct in the St. Eustatia affair from the beginning (Captain W. Young to Middleton, St. Eustatia, March 3, 1781, in Laughton, Letters and Papers of Charles, Lord Barham, I, 95; Middleton's memorandum, ibid., 97 ff.).

In regard to the date of Rodney's orders there seems to be a discrepancy. Reports from St. Pierre, Martinique, dated February 15, 1781, stated that the frigate which brought the directions to Admiral Rodney when at St. Lucia to commence hostilities against Holland had an extraordinarily short passage, his letters being dated the 6th of January (Papers of the Continental Congress, Letters of W. Bingham, J. Parsons, No. 90, Vol. I, 339, in the archives of the Department of State, Washington).

Instructions, similar to those sent to Rodney relative to the West Indies, were sent to the East Indies (Mahan, Influence of Sea Power, 406). But it was the Dutch West Indian possessions which England wanted to strike first, because of the assistance they were giving to the United States of America and France. Besides, there were only a few English men-of-war in the East Indies, while Admiral Rodney with his fleet was already in West Indian waters (Colenbrander, Patriottentijd, I, 191).

at St. Eustatia were filled and even the beach had been found covered with tobacco and sugar. All of this he would ship to England on board the vessels taken in the bay. He reported also that the Dutch islands of St. Martin and Saba had surrendered.[1] There were, however, very few vessels there.[2]

Rodney then directed Sir Samuel Hood with a squadron to attack Curaçao; Rear-Admiral Drake, to seize Surinam; while some frigates were to blockade the mouths of the rivers Demerari and Essequibo.[3] A Dutch convoy of twenty-six merchant vessels, which had sailed from St. Eustatia the night before Rodney's arrival, was captured by Captain Reynolds of Rodney's squadron and taken back to St. Eustatia. The Dutch Vice-Admiral Crul was killed in the action.[4] By not hauling down the Dutch flag at St. Eustatia for some days, Rodney caught several more merchant vessels entering the road of the island in good faith.[5] Samuel Parsons at St. Pierre, Martinique, on learning of the capture of St. Eustatia by the English, bought the fastest vessel in the harbor to convey the news to the United States, in order to prevent American vessels from going to St. Eustatia.[6] More than 2000 American merchants and seamen fell into Rodney's hands at St. Eustatia.[7] He was de-

[1] Rodney to Philip Stephens, Secretary of the Admiralty, St. Eustatia, February 4, 1781 (Rodney's Letters, 7); Gazette de Leyde, No. XXIV, March 23, 1781; De Jonge, Geschiedenis, IV, 462.

Captain Count Bylandt's report to the stadtholder regarding the loss of the Dutch frigate "Mars," February 6, 1781 (Gazette de Leyde, Supplement, March 27, 1781).

[2] Captain W. Young to Middleton, St. Eustatia, February 3, 1781 (Laughton, Barham's Letters, I, 91).

[3] Rodney to Stephens, February 6, 1781 (Rodney's Letters, 11).

[4] Van Beverhoudt to van der Capellen, St. Thomas, Februarv 21, 1781 (Beaufort, Brieven van der Capellen, 239). Tegelaar to van der Capellen, Amsterdam, March 21, 1781 (ibid., 226).

[5] Kampen, Verkorte Geschiedenis, II, 299; Major-General Vaughan to Lord George Germain, St. Eustatia, February 7, 1781 (Remembrancer, or Impartial Repository of Public Events, Part I, Vol. XI, 261).

[6] Samuel Parsons to the Committee for Foreign Affairs, St. Pierre, Martinique, February 15, 1781 (Papers of the Continental Congress, Letters of Bingham and Parsons, No. 90, Vol. I, 339).

[7] Rodney to Stephens, February 10, 1781 (Rodney's Letters, 13).

termined to remain at the island until all the stores captured should be embarked, and "till the *Lower Town,* that Nest of Vipers, which preyed upon the Vitals of Great Britain be destroyed."[1]

The Jews especially were made to feel his wrath. They were forced to give up all the cash and goods which they possessed, and were driven from the island,[2] but the persecution was not confined to the Hebrew race. Rodney ordered all Americans, without exception and distinction, to leave St. Eustatia, which fate was subsequently shared by all Frenchmen and also by all citizens of Amsterdam residing on the island. By a final proclamation the British admiral informed all foreigners of every kind that they must depart, allowing only the settled inhabitants of St. Eustatia to remain. Even English citizens engaged in commerce at the island were not spared, their goods being confiscated, though British merchants were allowed by special acts of Parliament (the Grenada Act, the Tobacco Act and the Cotton Act) to trade with St. Eustatia. Rodney gave as a reason for his proceedings that those Englishmen were supplying the enemies of their country.

All remonstrances, in which even the legislature of the island of St. Christopher took part, against Rodney's behavior were in vain. He shipped the stores which he had seized, partly to the British islands in the West Indies, partly to Great Britain, and the rest he sold at public auction.[3] The reproach was soon made to him that he committed the same crime for which he pretended to punish the people of St. Eustatia, in that he also supplied the enemies of Great Britain. The stores, sold at auction, were pur-

[1] Rodney to General Cunningham, Governor of Barbados, February 17, 1781 (Rodney's Letters, 17).

[2] Van Beverhoudt to van der Capellen, St. Thomas, February 21, 1781 (Beaufort, Brieven van der Capellen, 239).

Rodney's own almost boasting account of his treatment of the inhabitants of St. Eustatia is to be found in a letter to Stephens, dated St. Eustatia, March 6, 1781 (Rodney's Letters, 29–31).

[3] "As for the other goods . . . they were sold *sub hasta.* The island . . . became one of the greatest auctions that ever was opened in the universe" (Hannay, Rodney, 155).

chased by the neighboring neutral islands, from which they found their way to America and the French settlements. At the auctions only about one fourth of the value of the merchandise was realized, so that the enemies of Great Britain were supplied by the English government at much lower rates than by the Dutch.[1]

One Dutch man-of-war, the frigate "Eendragt," had been detached by Rear-Admiral Count van Bylandt on January 29, 1781, to sail for the West Indies. When on March 18 it reached the river Berbice, Captain A. de Roock sent Lieutenant Zeegers with an armed sloop to the governor of the Dutch colony. The lieutenant found the fortress burnt down and completely ruined. He then proceeded further up the river, where he met the director of the plantation "Ithaca," G. Hobus, who told him that, on March 7 or 8, letters had arrived from Demerari and Essequibo announcing the capture of those colonies by the English.[2] On the following day, Hobus said, a British war vessel of 36 cannon took Berbice, the crew putting the ammunition of the fortress on board and throwing everything else into the river. They then set fire to the fortress and loaded four ships, which they had taken in the river, with the products of the farm. Captain Roock did not consider his forces strong enough to retake and hold Berbice, so he sailed for the French island Grenada, where Governor Count de Durat informed him of the details of the seizure of St. Eustatia by Rodney. While Roock was at Grenada, a French ship arriving from Martinique brought the news that Rodney had sailed with his fleet from St. Lucia leaving about 1000 troops at St. Eustatia.[3] The English admiral's task on the

[1] Debate in the British Parliament on Mr. Burke's motion relating to the seizure and confiscation of private property in the island of St. Eustatia, May 14, 1781 (Hansard, Parliamentary History, XXII, 219–257).

Burke's speech on this occasion is remarkable for its force and beauty, though scarcely exaggerating the facts.

[2] It was also said that St. Eustatia and Curaçao were occupied by the English. Curaçao, however, was successfully defended against the British and remained Dutch (Blok, Geschiedenis, VI, 383).

[3] Report of Captain A. de Roock of the frigate "Eendragt" to the

latter island had been completed. After its capture and devastation he had continued using it as a trap for catching Americans. On March 29, he wrote from St. Eustatia to William Baird[1] that fifty American vessels had been taken and that their crews would be sent to England.[2] The island had then been in the possession of the English for about two months, but it seemed that the fact was not yet sufficiently known in the United States, for almost daily American vessels loaded with tobacco would approach St. Eustatia and fall an easy prey to the British forces.[3]

When the capture of nearly all of their West Indian possessions became known in the United Provinces it caused much consternation. Amsterdam's losses at St. Eustatia were enormous, and consequently the big city was deeply affected by this severe blow so promptly dealt by England. "The merchants of Amsterdam," wrote the American agent at the Hague, "who have a great share in the effects seized on at St. Eustatia, having resolved to send deputies to the English ministry in order to have them restored to them, and having invited the merchants of Rotterdam to join with them in this deputation, the latter have answered that, with men capable of acting so ruffianlike, they would rather let them keep all that they had robbed than debase themselves by courting the robbers. This noble answer would be still more so if Rotterdam had lost as much at St. Eustatia as Amsterdam; there being as for that a very great difference."[4]

Prince of Orange, June 24, 1781, and report of Lieutenant J. B. Zeegers to A. de Roock, March 18, 1781 (Sparks Dutch Papers).

The surrender to the English of the two Dutch colonies of Demerari and Essequibo was reported by Rodney to Stephens on March 17, 1781 (Rodney's Letters, 37).

Davies (History of Holland, VIII, 469, 470) says that Demerari, Berbice, and Essequibo were delivered up to the English with a pusillanimity which not even their insufficient state of defence could excuse.

[1] Baird had belonged to the English Council of the Government of New York.

[2] Rodney's Letters, 56; Gazette de Leyde, No. XXXIV, April 27, 1781.

[3] Rodney to General Cunningham, Governor of Barbados, March 31, 1781 (Rodney's Letters, 57).

[4] Dumas to the President of Congress, April 2, 1781 (Wharton, IV, 323).

Of what immense importance St. Eustatia had been to the American cause was recognized by the English to its fullest extent after they occupied the island. Rodney himself declared that had it not been for the "infamous island of St. Eustatia," the American rebellion could not possibly have subsisted.[1] The American agents and other people dealing or connected with the Congress of the United States who were taken prisoners at St. Eustatia were sent to England and subjected to hard treatment there. Franklin in Paris received instructions to pay particular attention to the exchange of these prisoners of war.[2]

Rodney and his country were to enjoy but little of the spoils taken at St. Eustatia! The admiral had dispatched thirty-four of the vessels, taken by him at that island and laden with valuable goods seized there, under the convoy of two English men-of-war to Great Britain. In the Channel this fleet was met by a French squadron under Vice-Admiral de la Motte-Piquet. He captured twenty-two of the Dutch merchant vessels and brought them into Brest.[3] The

[1] Rodney to Rear Admiral Sir Peter Parker, St. Eustatia, April 16, 1781 (Rodney's Letters, 69).

According to the English admiral, the business district of St. Eustatia, or Lower Town, was a range of storehouses of about a mile and a quarter in length. These stores were rented at the enormous sum of twelve hundred thousand pounds sterling a year (Rodney to Stephens, April 27, 1781, in Rodney's Letters, 75).

It is evident what an immense business must have been done at St. Eustatia when during the last stages of the American Revolution trading with the Americans and French allowed the paying of such exorbitant rents.

[2] James Lovell (for the Committee of Foreign Affairs) to Franklin, May 9, 1781 (Wharton, IV, 405, 406).

The prisoners mentioned in this letter were Mr. Samuel Curson, Mr. Isaac Gouverneur, Jr., and Dr. John Witherspoon, Jr.

Among the Dutch prisoners whom Rodney sent to England from St. Eustatia was the governor of the island, de Graaf. The latter's plantations were confiscated in the name of the king of England, "pour se venger de la faveur que ce Gouverneur a accordée selon les idées du Ministère Anglois au Commerce de l'*Amérique-Septentrionale*" (Gazette de Leyde, No. XXXIV, April 27, 1781).

[3] Berkenrode to the States General, May 13, 1781 (Bancroft MSS., America, Holland, and England).

Captain W. Young had advised Rodney to direct the route of the convoy and to inform Lord Sandwich where English cruisers might meet them in European waters, since the immense riches carried by

remaining twelve, according to a letter from Franklin, were soon afterwards taken by French and American privateers, so that not one ship of the convoy arrived in England.[1] St. Eustatia also was soon lost to the English. Rodney's ill health compelled him to leave for England, sailing on August 1, 1781. He had ordered the island always to be protected by several frigates and to have the large sum of money, still at St. Eustatia, sent in Rear-Admiral Hood's squadron to North America for the payment of the British troops there. For some reason or other these orders were not executed.[2]

In the meantime a French fleet of about four hundred sail, amongst which were said to be about thirty vessels of the line,[3] arrived in West Indian waters under the command of Count de Grasse. He was met by the general and commander of Martinique, Marquis de Bouillé, with about 1200 troops on board of three frigates, one sloop, and one brig. An expedition was then led by Bouillé to St. Eustatia,

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the fleet called for protection (Captain Young to Middleton, in Laughton, Barham's Letters, 94).

It seems that either Rodney did not follow Young's advice, or that the cruisers which were to meet the fleet missed them.

De la Motte-Piquet's capture of the convoy under Hotham raised the spirits of the Dutch "from that unmanly gloom and despondency into which they were thrown by the capture of St. Eustatia, Demerara, and Essequibo" (J. Adams to the President of Congress, May 16, 1781, in Wharton, IV, 419).

[1] Franklin to J. Adams, May 19, 1781 (Wharton, IV, 423).

John Adams thought that the capture of St. Eustatia was the most complete blunder the English had committed during the war because the island was the channel through which British manufactures were carried to North America, and it had furnished provisions and assistance to the English fleets and armies in the West Indies. As the British merchants were permitted by an act of Parliament to trade with St. Eustatia, all who had suffered by its capture were clamoring against the British government and especially against Rodney and Vaughan for illegally seizing their property. These commanders were threatened with as many law-suits as there were losers (J. Adams to the President of Congress, May 29, 1781, in Wharton, IV, 460–461); Andrews, History of the War, IV, 126.

In fact, Rodney was subsequently compelled to pay back all he had gained at St. Eustatia and died a poor man (Hannay, Rodney, 156).

[2] Rodney's Letters, 84.

[3] Samuel Parsons to Committee for Foreign Affairs, St. Pierre, Martinique, March 18, 1781 (Papers of the Continental Congress, Letters of W. Bingham, J. Parsons, No. 90, Vol. I, 343).

which place was reached in the night of November 26. The island was garrisoned by 650 British troops, commanded by Colonel Cockburn. Bouillé was prevented from landing more than 500 men, the sea running high. Of the events which followed this realistic description is given:—

"They [the French] concealed themselves among the Canes, till the Hour at which the Gates of the Fort were usually opened. In the Instant that the Troops came out to perform their Exercise on the Savanna, the Marquis caused the whole of his little army to discharge their Musquets in the air and rush with their Bayonets on the Enemy. It is impossible to conceive the confusion into which this well concerted Stratagem threw the British tho' much superior in Number and in actual position of Battle. Some called for Quarter and others took to their Heels, endeavouring to regain the Fort, which the French took possession of without opposition."[1]

Two hundred and fifty thousand pounds sterling in cash fell into the hands of the French,[2] so that no financial profit at all was derived by the English from their conquest of St. Eustatia. The island, however, had lost its importance. It no longer proved the mère nourricière, either for the United States or for the French,[3] falling back into its former insignificance, never to rise again up to the present day. The trade which had been carried on by way of St. Eustatia henceforth favored the Danish island of St. Thomas in the Lesser Antilles.[4]

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[1] Samuel Parsons to Committee for Foreign Affairs, St. Pierre, Martinique, December 31, 1781 (Papers of the Continental Congress, Letters of W. Bingham, J. Parsons, No. 90, Vol. I, 331).

The writer dated his letter correctly, at the end, December 31, 1781; at its head it is marked, however, December 31, 1780. This error seems not to have been detected when the letters were arranged in volumes, and this manuscript is consequently inserted in the wrong place.

France kept St. Eustatia as Dutch property for the Republic, not as a French conquest (Kampen, Verkorte Geschiedenis, II, 300).

[2] Rodney's Letters, 84.

[3] Hunt to Middleton, March 17, 1782 (Laughton, Barham's Letters, 149).

When Rodney returned to the West Indies in February, 1782, he learned that the French had not only taken St. Eustatia, but also the British islands of St. Christopher, Nevis, and Montserrat (Fitzmaurice, Shelburne, III, 125). Soon, however, the "tide of war" became again favorable to England, and "her flag was triumphant in every Part of the West Indies" until the conclusion of peace (Rodney's Letters, 175; Wharton, IV, 323).

[4] Colenbrander, Patriottentijd, I, 191.

In the East Indies the English at Madras, when learning of the rupture between Great Britain and the United Provinces, fitted out an expedition against the principal Dutch settlement on Coromandel coast, the town and harbor of Negapatam. An Indian prince, Hyder-Ali, being hostile to the English, there was danger that he and the French, with whom he was allied, would make common cause with the Dutch and use Negapatam as a place of arms. The command of the expedition was entrusted to Sir Hector Munro. The English garrisons were much reduced, their main forces being in the field against Hyder-Ali, and Munro's detachment, therefore, was comparatively small. Negapatam, on the other hand, was strongly fortified, and, besides, had been reinforced by Hyder-Ali, who foresaw the English attack. Negapatam was thus defended by more than 8000 men, while the English numbered about 5000; nevertheless after a siege of five days the town surrendered. Everything belonging to the Dutch government and the Dutch East India Company had to be delivered to the British.[1] With Negapatam the other Dutch possessions fell into the hands of the English and also the important harbor of Trinconomale on the island of Ceylon. These events in the East Indies took place on November 12, 1781, and January 15, 1782, respectively. Another possession of the Dutch, the Cape of Good Hope, was in danger of being taken by the British Captain Johnstone and his ships. It was saved only by the active intervention of the French, Admiral Suffren covering the Cape with a squadron.[2] Trinconomale, on September 1, 1782, was retaken from the English by Suffren, but Negapatam remained lost.[3]

[1] Andrews, History of the War, IV, 239, 240.
The English author concluded: "The reduction of Negapatam completed the revolution that had begun to take place in the southern provinces on the coast of Coromandel. It not only restored the power and influence of the [English] East India Company in those parts, but it raised the reputation and dread of the British arms higher than ever."

[2] Davies, History of Holland, III, 470; Kampen, Verkorte Geschiedenis, II, 300; De Jonge, Geschiedenis, IV, 470.

[3] Colenbrander, Patriottentijd, I, 195.

The Dutch at home were startled when they learned the fate of their colonies. It was impossible to render assistance, for the United Provinces had only fifty war vessels which could be considered serviceable, while the construction of new ones made little or no progress. There were, besides, not more than thirty-three vessels in the harbors at home, while the rest were abroad, and of these only eleven were ships of the line. With this small force, not even a convoy to the Baltic was ventured.[1] The aspect became a little brighter when, during the summer, reports arrived in the United Provinces that an encounter had occurred between the Dutch captains Melvill and Oorthuys and the English off Gibraltar. Although Melvill had been compelled to capitulate with his vessel, Oorthuys had not only saved the man-of-war under his command, but forced an English ship to haul down her flag.[2]

A convoy to the Baltic was now decided upon, although a strong British squadron under Admiral Hyde Parker was said to be near, and even to have orders to destroy the small Dutch fleet in the Texel. On August 1, 1781, the convoy, consisting of eight men-of-war, seven frigates, and one cutter under Rear-Admiral Zoutman, sailed from the Texel with seventy-two merchantmen.[3] On Sunday, August 5, between three and four o'clock in the morning, at the Doggersbank in the North Sea, they met Parker with eleven English war vessels and four cutters. The battle began at eight o'clock, and lasted until half past eleven. It was fierce and bloody. Both parties fought as long as their ships

[1] Urgent requests were made to the States General by shipowners, freighters, owners of plantations in the West Indies, merchants, etc., at Dordrecht, Haarlem, Amsterdam and Rotterdam for the protection of those Dutch Indian possessions not yet captured by the English. In case a convoy should not be possible, they asked to be granted generous contributions for the arming of their own vessels. This petition was received by the States General on June 7, 1781. It was approved by the Prince of Orange and resulted in a circular letter of the States General, dated June 20, to all the provinces recommending an appropriation of 1,200,000 guilders for the purpose desired (Sparks Dutch Papers); J. Adams to the President of Congress, June 12, 1781 (Wharton, IV, 495–498).

[2] Kampen, Verkorte Geschiedenis, II, 302–303.

[3] Davies, History of Holland, III, 470, 471.

were able to manoeuver. The English withdrew, and soon afterwards the Dutch also left the scene of the battle to repair their vessels as well as they could in order to sail back to the Texel, which they reached safely. Zoutman reported that on all vessels officers and men had shown great courage and had fought like lions.[1] According to Parker's account the Dutch were the first to retire, the British, however, not being able to follow them.[2]

When the news of the battle reached the United Provinces, the whole people were frantic for joy over its result. Van der Capellen wrote that the Dutch with an inferior force had put the English admiral, who commanded nine large vessels, to flight after a most bloody battle, which lasted for four hours. The courage of the Dutch had been so great that even those who had lost an arm or a foot could not be persuaded to leave their posts but insisted on remaining at the cannon.[3] After all the humiliations which the United Provinces had suffered from the hands of Great Britain this indecisive battle at the Doggersbank was exaggerated to a great national feat. John Adams, under the influence of public enthusiasm at Amsterdam, called the encounter a "glorious victory" of the Dutch.[4] The Prince of Orange, in person, presented Zoutman with a memorial coin on a golden chain, while King George III, considering Parker the victor, visited him on board his flagship.[5] There were, however, a few voices heard in the United Provinces judging the Doggersbank incident more soberly. They maintained that the battle could be regarded as a victory

[1] Rapport van . . . Schout bij Nagt J. A. Zoutman an Zijne Doorlugtige Hoogheid [Prince of Orange] van de Bataille met een Engelsch Esquader, August 10, 1781 (Sparks Dutch Papers).

[2] J. Adams to the President of Congress, August 18, 1781 (Wharton, IV, 642).

[3] Van der Capellen to Livingston, August 18, 1781 (Beaufort, Brieven van der Capellen, 257).

[4] J. Adams to the President of Congress, August 22, 1781 (Wharton, IV, 649).

[5] Kampen, Verkorte Geschiedenis, II, 301, 302.

William V of Orange publicly directed an address of thanks to all who had taken part in the combat on board of the Dutch vessels (J. Adams to the President of Congress, August 22, 1781, in Wharton, IV, 653, 654).

neither by the one nor by the other party, but that the English had succeeded in compelling the Dutch convoy to discontinue its voyage.[1]

In the meantime efforts to bring about peace were not wanting. Ever since the beginning of the war between Great Britain and the United Provinces attempts had been made to effect a reconciliation between the two powers. The Empress of Russia, Catherine II, made it her duty to try her utmost for such a purpose. At first she considered a joint mediation with Emperor Joseph II. She informed France and Spain of her plan, declaring that the mediation was to include all the belligerents.[2] The prospect of a mediation may perhaps have been one of the causes for the inactivity displayed by the Dutch, as it seemed that the majority of the people in the United Provinces did not think the war would continue long.

Not until the beginning of February were letters of

[1] Le Politique Hollandais, No. XXX, September 3, 1781.

As a matter of fact, the owners of the mercantile ships which had returned from the Doggersbank to the Texel later asked for an indemnification because their vessels were compelled to stay in harbor, which caused heavy expenses for equipping, wages, monthly pay, subsistence of crew, etc. (J. Adams to the President of Congress, October 18, 1781, in Wharton, IV, 787, 788).

[2] Harris to Stormont, January 15/26, 1781 (Malmesbury, Correspondence, I, 377).

Catherine's efforts to have Frederick the Great offer his mediation to the United Provinces failed because the Prussian king, it was said, did not want to take a share in the quarrel (Elliot to Harris, February 10, 1781, in Malmesbury, Correspondence, I, 384).

As a fact, however, the king was willing to use his good offices for the Republic, but he feared that his representations might, in the beginning at least, be coolly received in England (Frederick II to Thulemeier, February 12, 1781, in Bancroft MSS., Prussia and Holland). The project of Frederick's mediation was discussed by the Prince of Orange, the Grand Pensionary, and Griffier Fagel. They demanded that Great Britain should not only recognize the independence of the flag of Dutch merchant vessels, but also the validity of the treaty of 1674 with the clause of free ships, free goods (Thulemeier to Frederick II, February 23, 1781, in Bancroft MSS., Prussia and Holland). The king answered now that the Republic would obtain her ends more easily and promptly through Russian mediation. The representations, in order to be effective, should be made through a maritime power. He would therefore try to engage Russia to use all her influence in the interests of the United Provinces (Frederick II to Thulemeier, March 1, 1781, in Bancroft MSS., Prussia and Holland).

marque demanded by a privateer from Rotterdam, while Amsterdam refused altogether to take them. Vauguyon, in order to rouse the energy of the Dutch, even offered to furnish French letters of marque to their privateers, but he found no candidates for such favors in the United Provinces.[1] Nevertheless, strong as their desire for peace may have been, owing to the consciousness of their utter feebleness, the States General unanimously rejected a formal proposition of the province of Zealand to open direct negotiations with the court of St. James.[2]

At the beginning of March Prince Gallitzin, the Russian ambassador at the Hague, informed the States General confidentially that the empress, through Simolin, her minister in London, had made urgent representations at the court of St. James for conciliation.[3] This step was attributed to the intervention of Frederick the Great at the Russian court. No results, however, were expected since the principles adopted by the United Provinces and Great Britain respectively regarding the maintenance of the maritime treaty of 1674 were too much opposed.[4] The court of Vienna, having solicited the empress for cooperation in bringing about peace between the belligerents, received the answer that Catherine was willing to accept Joseph's cooperation, but that, first, a reconciliation must be effected between England and the United Provinces.[5] Frederick the Great thought that Catherine's desire to reconcile Great Britain with the United Provinces was sincere. He had even received information from St. Petersburg that, in case England should refuse an

[1] Thulemeier to Frederick II, February 6, 1781 (Bancroft MSS., Prussia and Holland).

[2] Thulemeier to Frederick II, February 9, 1781 (ibid.).

[3] Dimitri Prince de Gallitzin to the States General, March 1, 1781 (Sparks Dutch Papers); Secret Resolution of the States General, March 1, 1781 (Sparks MSS., CIII; Bancroft MSS., America, Holland, and England); Dumas to the President of Congress, March 5, 1781 (Wharton, IV, 273); J. Adams to the President of Congress, March 18, 1781 (ibid., IV, 312–313).

[4] Thulemeier to Frederick II, March 2, 1781 (Bancroft MSS., Prussia and Holland).

[5] Frederick II to Thulemeier, March 15, 1781 (Bancroft MSS., Prussia and Holland).

adjustment with the Republic on the basis of the empress' suggestions, she would, together with her allies, openly take sides with the United Provinces.[1] The latter speedily accepted the mediation offered by Russia, but the English court hesitated and made difficulties.[2] Lord Stormont, who favored a general peace, was opposed to it.[3] The British government, therefore, answered that a mediation between England's old enemies, the French and Spaniards, would be acceptable, but not with regard to the Dutch.[4] Catherine was much annoyed at this reply,[5] considering the refusal as a want of confidence and respect, and attributing it to personal aversion to her.[6] Her indignation was still noticeable in the letter by which she informed the States General of England's attitude and in which she stated that "her compassionate heart had been affected with the difficulties formed by the court of London."[7]

Another effort at mediation was made in July, 1781. This time Catherine and Joseph agreed to try together to procure a general pacification between the belligerent powers, and the States General were sounded by them accordingly. The United Provinces again were willing to accept. Even the Patriots advised this course because they apprehended that

[1] Frederick II to Thulemeier, March 19 and 26, 1781 (Bancroft MSS., Prussia and Holland). Catherine was offered every inducement by England to draw her away from the United Provinces. A convention between Great Britain and Russia was suggested and Minorca set as prize, but the empress refused on the ground that she would appear to be influenced as mediatrix by one of the belligerents, if she accepted. Harris gave as a commentary on her answer that she was longing to obtain Minorca, but that she had not the courage to subscribe to the means by which it could be had (Harris to Stormont, March 13/24, 1781, in Malmesbury, Correspondence, I, 401, 402).

[2] Dumas to the President of Congress, March 22, 1781 (Wharton, IV, 322, 323); Secret Resolution of the States General, March 23, 1781 (Sparks MSS., CIII).

[3] Thulemeier to Frederick II, April 10, 1781 (Bancroft MSS., Prussia and Holland).

[4] Malmesbury, Correspondence, I, 410.

[5] Frederick II to Thulemeier, April 9, 1781 (Bancroft MSS., Prussia and Holland).

[6] Harris to Stormont, April 9/20, 1781 (Malmesbury, Correspondence, I, 410).

[7] J. Adams to the President of Congress, June 23, 1781 (Wharton, IV, 513).

otherwise the opposite party might continue to recommend suing for peace directly with England.[1] It was proposed that an armistice of one year should be signed and that the United States should be included in this arrangement. Great Britain declined this plan of mediation also, emphasizing the fact that she would not accept the intervention of any power between herself and her colonies.[2]

In the meantime England tried to negotiate with the United Provinces directly, mainly in order to satisfy the opposition in Parliament. On behalf of the British government, Triquetti, the Sardinian consul at Amsterdam, who was in English pay, made the following proposition to the Dutch for an adjustment of the differences between the two powers. The old treaties were to be renewed, with the exception of that of 1674. The article dealing with naval munitions was to be changed according to the English views. Furthermore satisfaction was to be given for the negotiations of Amsterdam with the United States relative to a commercial treaty. Triquetti's efforts failed. Lord North then sent Paul Wentworth, proprietor of plantations at Surinam, and who had some relations with the United Provinces, to Amsterdam to negotiate with Rendorp, one of the burgomasters of that city. Rendorp demanded indemnity for all the Dutch ships captured by the English.

The Duke of Brunswick was for a separate peace with England, but the Grand Pensionary van Bleiswijck, the Princess of Orange, and also the envoys of France and Prussia were opposed to the plan, so the negotiations remained futile.[3] England, now feeling sure that it would not be possible to draw the Republic back to her former ally, would not have made a third attempt for a separate peace with the United Provinces, had it not been for two reasons. The first was that the opposition in Parliament had to be appeased, and the second that Catherine was once more pro-

[1] Dumas to the President of Congress, July 4, 1781 (Wharton, IV, 396).
[2] Malmesbury, Correspondence, I, 433.
[3] Colenbrander, Patriottentijd, I, 209 ff.

posing a mediation between England and the Republic.[1] Harris advised the English king to accept Catherine's proposal this time, because a refusal would be liable to operate very powerfully on her irritable character, and however potent and conclusive the reasonings might be, they would carry no conviction to a mind like hers. He even hinted that Catherine might join in the war against Great Britain.[2]

On September 11, 1781, England accepted Russia's separate mediation in order to gain Catherine's friendship.[3] The latter soon opened negotiations, this time at the Hague, suggesting that all unnecessary formalities be omitted and that both parties state their conditions of peace. The terms would then be compared to see if there was any prospect for a speedy arrangement.[4] The States General also accepted Catherine's offer,[5] although the large cities like Amsterdam and Rotterdam seemed little disposed toward a separate peace with England.[6] These proceedings did not please France. The French ambassador, Vauguyon, asked the Grand Pensionary that the Republic should not conclude a separate peace with Great Britain, and said that the King of France would like to be informed of any step taken by the United Provinces in that direction. He was answered that, although the States General knew of no obligation forbidding them to conclude a separate peace with England, since there was no alliance, not even a concert with France, His Majesty the King would be promptly instructed of everything pertaining to his interests.[7]

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[1] Colenbrander, Patriottentijd, I, 213.

[2] Harris to Stormont, August 14/25, 1781 (Malmesbury, Correspondence, I, 441).

[3] Stormont to Harris, September 7, 1781 (Malmesbury, Correspondence, I, 446–447). Regarding the text of Stormont's note to Simolin, accepting Russia's mediation, see J. Adams to the President of Congress, December 13, 1781 (Wharton, V, 43, 44).

[4] Secret Resolution of the States General, November 26 and 27, 1781 (Sparks MSS., CIII).

[5] Secret Resolution of the States General, December 18, 1781 (Sparks MSS., CIII; Sparks Dutch Papers).

[6] Thulemeier to Frederick II, December 4, 1781 (Bancroft MSS., Prussia and Holland).

[7] Same to same, December 25, 1781 (Bancroft MSS., Prussia and Holland).

In January, 1782, the Empress of Russia dispatched Markoff to the Hague to conduct the negotiations. Before his departure from St. Petersburg the English envoy, Harris, tried to influence him favorably toward England, warning him especially against Vauguyon and the King of Prussia. Markoff would see the latter while passing through Berlin on his way to the United Provinces. Harris, according to his own words, gave Markoff "such intelligence on the character and disposition of His Prussian Majesty [Frederick the Great], as might put him on his guard against His very persuasive manner, and almost irresistible eloquence,"[1] which shows how much the English apprehended Frederick's influence in the United Provinces. The kings of Sweden and Denmark also offered their good offices to Great Britain, but their mediation was refused.[2]

Dana, the American agent at St. Petersburg, foresaw that Catherine's last efforts to bring about a separate peace between England and the United Provinces would be as fruitless as before. In his opinion, which finally proved to be correct, there could be no peace in Europe separate from that of the United States, since the latter affected the European systems too sensibly to be overlooked.[3] In the United Provinces the same view prevailed. "A separate peace with England," wrote Livingston, "is now impossible without degrading the character of the nation and exposing it to greater evils than they are threatened with from England. Besides, what advantages are to be derived from such a peace? Can Britain restore her conquests, now in the hands of the French? Can she give back the plunder of St. Eustatia, or the cargoes of the Indiamen divided among the captors? Can she afford them a compensation for the loss of last year's commerce? Or can she draw from her ex-

[1] Harris to Stormont, St. Petersburg, January 7/18, 1782 (Malmesbury, Correspondence, I, 480–482).

[2] J. Adams to the President of Congress, December 25, 1781, and January 16, 1782 (Wharton, V, 70, 71, 114, 115); Dana to Ellery, January 17, 1782 (ibid., V, 116); Dana to Livingston, March 5, 1782 (ibid., V, 223).

[3] Dana to Ellery, January 17, 1782 (ibid., V, 116).

hausted purse sufficient sums to defend the barrier against the troops of France, who would certainly avenge herself for such ingratitude?"[1]

In March, 1782, the States General formally communicated their conditions for a separate peace with England to the Russian government, which were that the rights of the Armed Neutrality be saved to them. This meant free navigation.[2] England, on the other hand, demanded that the treaty of 1674 should not be renewed in its old form, thereby denouncing the principle of free ships, free goods. Furthermore, no indemnity for injuries done to Dutch property at sea was mentioned. As to the Dutch colonies occupied by the English, uti possidetis was to be the basis of the settlement. In addition to this, the United Provinces should be obliged to expel the American agents from their territory and to forbid all loans for the United States.[3]

For the purpose of quieting the opposition in Parliament, the English government decided again to send Paul Wentworth secretly to the United Provinces in behalf of a separate peace.[4] His instructions directed him to find out also whether, in case of such a peace being brought about, France was to keep the Cape until a general peace would be concluded. England cared for a separate peace with the Republic only if the French were to abandon the Cape, but even then the obnoxious article regarding "free ships, free goods" would have to be removed from the treaty of 1674. The Prince of Orange, acting upon Rendorp's advice, informed France of England's proposition, adding that the

[1] Livingston to J. Adams, March 5, 1782 (Wharton, V, 220).

[2] Secret Resolution of the States General, March 4, 1782 (Sparks Dutch Papers).

The States of Holland passed the measure in February, 1782 (J. Adams to Livingston, February 19, 1782, in Wharton, V, 188).

As early as about the middle of February, 1782, Harris had been privately informed in St. Petersburg that the acknowledgment by England of the principles of the Armed Neutrality would mean immediate peace with the United Provinces (Harris to Stormont, February 4/15, 1782, in Malmesbury, Correspondence, I, 483, 484).

[3] Colenbrander, Patriottentijd, I, 215.

[4] Thulemeier to Frederick II, February 26, 1782 (Bancroft MSS., Prussia and Holland).

United Provinces would not make any arrangements contrary to the principles of the Armed Neutrality. When Wentworth arrived at the Hague pretending that his government had sent him for negotiations on the exchange of prisoners of war, he was told that the United Provinces demanded of England free navigation, return of the Dutch possessions occupied by the British, and an indemnity for the Dutch losses at sea. This was almost equal to a refusal of the English offer, and, in fact, Wentworth had to return to Great Britain without having achieved anything.[1]

On March 30, 1782, Lord North's cabinet fell. Rockingham became prime minister and Fox secretary for foreign affairs. This meant a complete change in the foreign policy of Great Britain. One of Fox's first official acts was to write a letter to the Russian envoy in London in which peace was offered to the United Provinces on the basis of the treaty of 1674 and an immediate truce proposed.[2] Harris was now directed to persuade Catherine to a more active and efficient negotiation.[3] Fox's letter to Simolin, dated March 29, 1782, was transmitted to the States General.[4] The question was now, whether the United Provinces would abandon "France and America, and throw themselves alone upon the Mercy of England."[5] In May, Fox renewed his proposition to the United Provinces,[6] but the latter, in the meantime, had concluded a concert with France for combined naval action, and were consequently not free to accept England's offer.[7]

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[1] Colenbrander, Patriottentijd, I, 218–220.

[2] Franklin to Livingston, April 12, 1782 (Wharton, V, 300).

[3] Fox to Harris, April 2, 1782 (Malmesbury, Correspondence, I, 493–495); Harris to Fox, April 19/30, 1782 (ibid., 498–500).

[4] Memorie, Exhibitum, April 3, 1782 (Sparks Dutch Papers).

[5] J. Adams to van der Capellen (Beaufort, Brieven van der Capellen, 278).

[6] Dumas to Livingston, May 10, 1782 (Wharton, V, 410); Extract, Secret Resolution of the States of Holland, May 24, 1782 (Sparks Dutch Papers).

Fox's second letter was dated May 4, 1782 (Secret Resolution of the States General, May 13, 1782, in Sparks MSS., CIII).

[7] Concept-Extensie mit kragt der Resolution commissorial van 15 en 24 Mey 1782. Exhibitum 31 Mey 1782 (Sparks Dutch Papers).

Secret Resolution of the States General, July 17, 1782 (Sparks

On April 12, 1782, Admiral Rodney won a tremendous naval battle in the West Indies, which lasted almost twelve hours without a moment's intermission. The commander of the French fleet, Count de Grasse, was taken prisoner and his flagship, with four other ships of the line, was seized by the English.[1] Adams said that this success made England so giddy that she would give up the idea of peace for some time.[2] Soon also the attention of the Empress of Russia was drawn to affairs at home, a Turkish war being expected, which prevented her from prosecuting with vigor her plans for mediation,[3] and this practically caused the discontinuance of the negotiations.

Ever since the beginning of the war the United Provinces had stood in reality alone. Their relations with France were scarcely different from those before the war, except that on May 1, 1781, at Versailles a convention had been signed by Vergennes and the Dutch envoy, Lestevenon van Berkenrode, regarding reprisals.[4] Some people thought that an alliance between France and the Republic would occasion a general European war.[5] Frederick the Great warmly recommended an alliance with the French court, but the Prince of Orange, who was still in favor of England, expressed his apprehension that this would mean absolute

Dutch Papers), according to which the King of France expressed his satisfaction at the refusal of the Dutch regarding a separate peace.

[1] Rodney to the Lieutenant-Governor of Jamaica. On board the "Formidable," between Guadaloupe and Monserrat, April 14, 1782 (Journals of the Assembly of Jamaica, VII).

[2] J. Adams to Livingston, June 9, 1782 (Wharton, V, 483).

[3] Harris to Grantham, August 5/16, 1782 (Malmesbury, Correspondence, I, 527); same to Lord Mountstuart, October 14/25, 1782 (ibid., II, 4, 5); same to Grantham, November 25/December 6, 1782 (ibid., II, 16).

[4] Van Berkenrode to the States General, May 3, 1781 (Bancroft MSS., America, Holland, and England).

The convention was ratified at the Hague on May 16, 1781, and at Versailles on May 27, 1781 (Sparks Dutch Papers; Wharton, IV, 435). For text of the convention see also Wharton, IV, 435.

[5] J. Adams to the President of Congress, June 15, 1781 (Wharton, IV, 507).

dependence of the Republic upon her powerful neighbor.[1] The king informed his envoy at the Hague that this answer seemed to him to be not only superficial but weak. What, he said, would be the result, if peace was concluded at a moment when the United Provinces were without allies? No one would be interested in the fate of the Republic. On the other hand, if she were an ally of France, that power would be obliged to secure an honorable and suitable peace for the Dutch.[2]

In the provinces the idea of an offensive and defensive alliance with France had many adherents. In November even a whole province, that of Friesland, proposed it to the States General.[3] The Patriots, of course, worked also for an alliance with France. Van der Capellen,[4] however, thought that the views of France and the other great powers on this subject should be known before definite steps were taken. Vauguyon, whom he addressed accordingly, avoided an answer, thereby arousing van der Capellen's suspicion. France, the latter wrote to a friend, must find means to prevent other powers from interfering with the affairs of the United Provinces. If she could not, or would not do this, the Patriots would make no further attempts to bring about an alliance with her. It was true that the Republic was only a second-class power, not strong enough to defend herself successfully even against one of the three great

[1] Thulemeier to Frederick II, July 20, 1781 (Bancroft MSS., Prussia and Holland).

[2] Frederick II to Thulemeier, July 26, 1781, and January 3, 1782 (Bancroft MSS., Prussia and Holland).

[3] Resolution of the States General, November 16, 1781 (Sparks MSS., CIII); Thulemeier to Frederick II, November 23, 1781 (Bancroft MSS., Prussia and Holland).

[4] Van der Capellen, the public sentiment being strongly in his favor, was in the beginning of 1783 restored to his seat in the provincial assembly of Overyssel, from which he had been expelled after his famous speech against the lending of the Scotch Brigade to Great Britain (above, p. 32). J. Adams, who as American peace commissioner was temporarily in Paris, sent his congratulations to van der Capellen by Dr. Wheelock, the president of Dartmouth College in America, who happened to travel from Paris to the United Provinces (J. Adams to van der Capellen, February 18, 1783, in Beaufort, Brieven van der Capellen, 369).

powers surrounding her. This would necessitate an alliance of the United Provinces with one or the other of these countries, preferably with the strongest and the one which, by her position, could either benefit or injure the Republic most. This was France.[1] For fear that the latter power might altogether withdraw from the United Provinces and keep the Dutch colonies in her possession the Patriot leader continued to plead for an alliance.[2]

The French court, on the other hand, was not pleased with the various efforts made for a separate peace between Great Britain and the United Provinces, and Vauguyon was very active in his efforts to thwart them. He did not conceal the fact that the court at Versailles would take strong countermeasures in case the Republic should accept conditions from Great Britain incompatible with her dignity and contrary to the interests of the belligerents.[3] How utterly without power and defence the Dutch really were is shown by an incident which, under different circumstances, might have provoked war. The United Provinces, in their controversies during the preceding century with Louis XIV, had obtained the right of keeping garrisons in several barrier fortresses of the Austrian Netherlands, as a protection against French aggressions. Emperor Joseph II now took advantage of the weakness of the Netherlands and forced them to withdraw these garrisons in November, 1781.[4]

Although there was no prospect of a formal alliance between France and the United Provinces, serious preparations were made for a time in the Republic for a combined naval action with France against England. In a secret

[1] Van der Capellen to Vauguyon, November 2, 1782; Vauguyon to van der Capellen, November 5, 1782; van der Capellen to Gijzelaar, November 11, 1782 (Beaufort, Brieven van der Capellen, 362 ff., 374).

[2] Van der Capellen to Vauguyon, December 2, 1782 (Beaufort, Brieven van der Capellen, 394, 395); same to Valck, December 15, 1782 (ibid., 419, 420).

[3] Thulemeier to Frederick II, December 21, 1781 (Bancroft MSS., Prussia and Holland).

[4] Wild, Die Niederlande, I, 267; Davies, History of Holland, III, 488, 489; Dumas to the President of Congress, January 30, 1782 (Wharton, V, 139).

session of the States General in the spring of 1782 it was resolved to request the Prince of Orange to confer with the court of France on such a concert.[1] Though he did not consider the Dutch fleet strong enough to furnish convoys, defend the coast, and fight the enemy at the same time,[2] William V carried out the resolution. France willingly entered into the agreement, thereby binding the Dutch to her interests, but answered evasively regarding all active measures which might result therefrom. She had made a secret arrangement with Spain to have the French fleet near Gibraltar, and now kept the United Provinces waiting for the promised combined naval action. This prevented them from accepting Fox's peace offers,[3] which they undoubtedly would have done if France had shown her cards openly.

The Dutch, in their ignorance of the real cause, condemned the Prince of Orange for letting the Dutch war vessels remain in the ports of the Republic instead of having them join the French fleet. Finally a juncture of the fleets at Brest was arranged between the two powers, but the ten Dutch vessels which were designated for this purpose refused to sail and declared that they were not prepared for such a step. This caused a storm of indignation in the United Provinces and violent attacks on the Prince of Orange.[4] An investigation regarding the condition of the Dutch navy and the causes of its inefficiency was instituted, lasting until 1787, but with no practical results.[5]

[1] Secret Resolution of the States General, March 4, 1782 (Sparks Dutch Papers).

[2] Thulemeier to Frederick II, February 19, 1782 (Bancroft MSS., Prussia and Holland).

[3] Colenbrander, Patriottentijd, I, 231, 232.

[4] J. Adams to Livingston, September 23, 1782 (Wharton, V, 752); Dumas to Livingston, September 27, 1782, and March 27, 1783 (ibid., V, 777; VI, 347); Davies, History of Holland, II, 447, 474–478; Kampen, Verkorte Geschiedenis, II, 305 ff.

Very ugly accusations were made also against the Duke of Brunswick which finally caused his downfall (Kampen, Verkorte Geschiedenis, II, 305 ff.). When the popular indignation threatened to become an uprising against him, he left the Hague to take up his residence in his own government, Bois-le-Duc (Davies, History of Holland, III, 478).

[5] Blok, Geschiedenis, VI, 391.

CHAPTER VIII.

The United States and the United Provinces form Closer Relations.

Van der Capellen wrote in 1779 that the time had not yet come for the public reception of an American envoy by the United Provinces. He advised, however, that Congress should send over a gentleman of distinction and ability, who might, in the beginning, live in the Republic as a private citizen, study the conditions of the country and learn its language, until an occasion for showing his public character should arrive.[1] The United States had sufficient work for such a representative in the United Provinces, since now all correspondence between the two republics had to be directed through the American ambassador, Franklin, at Paris. It seemed that the latter gentleman was already overburdened with work, and that the affairs of America for that reason must suffer, at least as far as the Netherlands were concerned.[2]

Probably acting upon van der Capellen's advice, Con-

[1] Van der Capellen to Trumbull, July 6, 1779 (Beaufort, Brieven van der Capellen, 108, 109).

[2] Van der Capellen to Livingston, July, 1779 (Beaufort, Brieven van der Capellen, 115).

Steven Sayre asserted that he had been asked by Franklin whether van der Capellen had applied to Congress to be appointed United States minister to the Netherlands. Sayre answered that if van der Capellen had done this, his only motive could have been the wish to serve America (Sayre to van der Capellen, October 24, 1779, in Beaufort, Brieven van der Capellen, 158). There are no suggestions in van der Capellen's correspondence that he ever desired to be appointed American minister. Probably Dumas saw and misunderstood van der Capellen's letters to Trumbull and Livingston regarding the sending over of an American representative, and informed Franklin erroneously that the Dutch statesman was anxious to receive a commission.

Van der Capellen was indignant and thanked Sayre for defending his character against the "calumny" (Van der Capellen to Sayre, November 16, 1779, in Beaufort, Brieven van der Capellen, 159).

gress in October, 1779, appointed its former president, Henry Laurens, minister plenipotentiary of the United States to the United Provinces.[1] He also received instructions to negotiate a loan of ten millions abroad. But Laurens being delayed in departing for the United Provinces, John Adams, then residing at Paris, was authorized by Congress on June 20, 1780, to enter upon that part of the minister's duties in the Republic.[2] On September 3, following, the vessel "Mercury" in which Laurens had finally sailed for Europe was taken by the English cruiser "Vestal" and the minister himself was made prisoner, his papers, as has been seen, furnishing Great Britain the pretext of her rupture with the Netherlands.[3]

John Adams, arriving at Amsterdam in August, 1780, previous to the receiving of his commission, found his position difficult from the beginning.[4] Not being vested with any political authority, he did not communicate his business to the States General and the Prince of Orange, or even to the magistrates of Amsterdam.[5] He was, however, of opinion that he would be successful, if he had full powers from Congress, in opening a considerable loan in the United Provinces and extending the commerce between the two countries.[6] The Dutch were highly ignorant of American affairs, and it would be necessary to enlighten them before they would risk anything for the United States.[7] While

[1] Van Dircks to van der Capellen, November 30, 1779 (Beaufort, Brieven van der Capellen, 165).

[2] Wharton, I, 506; IV, 56, 61. Dana received the same commission, in case Adams should be unable to take Laurens' place (ibid., IV, 62, 63).

[3] Ibid., I, 579.

[4] According to his own words, he entered the United Provinces "a forlorn pilgrim without a letter of introduction." He received his provisional commission for negotiating a loan only on September 19, 1780 (Fairchild, van der Kemp, 65).

[5] J. Adams to the President of Congress, September 24, 1780 (Wharton, IV, 66); Thulemeier to Frederick II, October 13, 1780 (Bancroft MSS., Prussia and Holland).

[6] J. Adams to the President of Congress, August 14 and 23, 1780 (Wharton, IV, 29, 42); October 11, 1780 (ibid., IV, 95); October 14, 1780 (ibid., IV, 98).

[7] J. Adams to the President of Congress, September 25, 1780 (ibid., IV, 67–69).

Franklin felt humiliated by "running about from court to court begging for money and friendship,"[1] Adams saw no reason why they should be ashamed

"of asking to borrow money, after maintaining a war against Great Britain and her allies for about six years without borrowing anything abroad. When England has been all the time borrowing of all the nations of Europe, even of individuals among our allies, it can not be unnatural, surprising, or culpable, or dishonorable for us to borrow money. When England borrows annually a sum equal to all her exports, we ought not to be laughed at for wishing to borrow a sum annually equal to a twelfth part of our annual exports. We may and we shall wade through if we can not obtain a loan; but we could certainly go forward with more ease, convenience and safety by the help of one. I think we have not meanly solicited for friendship anywhere. But to send ministers to every great court in Europe, especially the maritime courts, to propose an acknowledgment of the independence of America and treaties of amity and commerce, is no more than becomes us, and in my opinion is our duty to do. It is perfectly consistent with the genuine system of American policy, and a piece of respect due from new nations to old ones."[2]

Van der Capellen, who had so often before shown his sincere desire of furthering the American cause, offered his services to Adams and recommended a number of friends to him, as Adriaan Valck at Rotterdam, Tegelaar, and the Mennonite minister van der Kemp,[3] who might be employed as correspondents or in any other capacity for promoting Adams' object.

From another side also aid was proposed to Adams. The King of Spain had expressed his willingness to guarantee the payment of the interest and principal of a loan of 150,000 dollars for the use of the United States. The American commissioners at Paris could not avail themselves of this offer on account of the extensive loans which the French minister of finance, Necker, was about to make. Franklin, therefore, thought that probably the king's promise might have weight in the United Provinces.[4] In this, however, he

[1] Franklin to Adams, October 2, 1780 (Wharton, IV, 74).
[2] J. Adams to Franklin, October 14, 1780 (Wharton, IV, 96).
[3] Van der Capellen to J. Adams, October 16, 1780 (Beaufort, Brieven van der Capellen, 199, 200).
Interesting is Adams' letter to van der Capellen of October 17, 1780, in which he informed the latter of the financial condition of the United States (ibid., 195–199).
[4] Franklin to J. Adams, October 20, 1780 (Wharton, IV, 101).

was very much mistaken. The Dutch did not show any inclination at all to loan money to the United States.[1] The latter, disappointed at not being successful in borrowing money either in Spain or the Netherlands, appealed to Louis XVI. A foreign loan of specie, they said, at least to the amount of twenty-five million livres would be indispensably necessary for a vigorous prosecution of the war. The King of France was asked either to advance this sum from his royal coffers or to help Congress to secure it from other sources by acting as security for the payment of interest and principal.[2]

Adams' efforts to raise a loan in the United Provinces were much hampered by similar attempts of the separate American states. Mr. A. Gillon, for example, was active at Amsterdam in his efforts to borrow money for South Carolina at five per cent. interest.[3] Adams attributed his failure to obtain money to the avarice of the Dutch and to their fear that the United States might finally submit to England.[4] Van der Capellen even was somewhat discouraged at the fact that the credit of the United States was so low in the United Provinces. He gave Adams advice as to how the loan could be started, and recommended Tegelaar as a negotiator, or, if he should not suit, J. de Neufville. He mentioned in this connection also the house of Fizeaux, but thought that the fact that its head was related to an English general serving in America should be considered.[5] Adams' answer showed that he had lost almost all hope of ever succeeding in his mission. He would not think it wise or honest to deceive America with any hope of assistance in any

[1] J. Adams to the President of Congress, November 17, 1780 (Wharton, IV, 155); Yorke to Stormont, August 11, 1780 (Sparks MSS., LXXII).

[2] Congress to the King of France, November 22, 1780 (Wharton, IV, 159, 160).

[3] Gillon to van der Capellen, November 25, 1780 (Beaufort, Brieven van der Capellen, 192–194).

[4] J. Adams to the President of Congress, November 25, 1780 (Wharton, IV, 161).

[5] Van der Capellen to J. Adams, November 28, 1780 (Beaufort, Brieven van der Capellen, 208).

way from the Republic. A dispute arose between Adams and van der Capellen regarding the causes of the Dutch attitude, the former attributing it to the fear of the English, and remarking, "The less America has to do with such people, the better it will be for her."[1] Van der Capellen refuted this view, asserting that the bad news from America, the loss of Charleston, the defeat of General Gates, Arnold's desertion, and above all the enormous depreciation of the American paper money had caused the low credit of the United States in the Republic. He assured Adams that the great majority of the Dutch, certainly more than four fifths of them, loved the Americans, and wished sincerely that the United States might be victorious in the end.[2]

In January, 1781, Congress decided to appoint John Adams American minister plenipotentiary to the United Provinces and provided him with credentials to the Prince of Orange.[3] He was instructed not only to negotiate a loan, but also to conclude, if possible, a treaty of commerce and amity with the Republic. His reception by the States General would, of course, involve the acknowledgment of the independence of the United States. Many difficulties were still existing in the United Provinces for such a step. The Prince of Orange especially was hostile to closer relations with the United States. As early as 1778 he had declared that he would retire from the office of stadtholder and with his family leave the country, rather than accede to the acknowledgment of the independence of the United States, because in this case the Republic would be completely delivered to France.[4] Adams seems to have been fully aware of the fact that there was no prospect yet for his obtaining

[1] J. Adams to van der Capellen, December 9, 1780 (Wharton, IV, 190). Adams expressed himself similarly to the President of Congress on December 14, 1780 (ibid., IV, 192).

[2] Van der Capellen to J. Adams, December 24, 1780 (Beaufort, Brieven van der Capellen, 209).

See Adams' reply of January 21, 1781 (J. A. Sillem's supplement to Beaufort, Brieven van der Capellen, 46–54).

[3] Huntington, President of Congress, to J. Adams, January 1, 1781 (Wharton, IV, 224, 225).

[4] Nijhoff, Brunswijk, 154, 155.

any concessions in the United Provinces. His letters in January and February show that he had not moved one step forward regarding a loan, and that his hopes for being more successful in the near future were very small.[1]

The plan of this loan was to issue one thousand obligations at one thousand guilders each, bearing interest at the rate of five per cent., payable in coupons of twenty-five guilders every six months. This interest was thought more than satisfactory, since it was one per cent. more than was ordinarily paid for bank deposits. The whole amount would be redeemed at the end of the tenth year. The guarantee of all the states combined and of each singly should serve as security for the whole, capital and interest. Their tobacco trade alone, if necessary, would guarantee the restitution of one million guilders in ten years. One objection made in the United Provinces against the loan was that the money could be used to greater advantage at home for furthering Dutch industry. Many Dutch, however, were of the opinion that by gaining free commerce and navigation with the United States, considerable profits could be obtained, since the sending of manufactures there and the bringing back of raw products would not only employ Dutch merchants and shippers, but also Dutch factories.[2]

In the meantime Louis XVI had considered the request of the United States for a loan of twenty-five million livres. Franklin was now told by the French foreign minster that the king was not able to favor the loan in his own dominion, because it would interfere with his obtaining money to continue the war, but that he would turn over to the United States the sum of six millions as a gift exclusive of the three millions which he had secured for Franklin before.[3]

[1] J. Adams to the President of Congress, January 4 and 15, 1781 (Wharton, IV, 227, 235); same to Franklin, February 15, 1781 (ibid., 256).

[2] Pamphlet, Drie Brieven etc. over het uitgekommen plan van een negotiatie etc., February 25, 27, and 28, 1781; Carmichael to the Committee of Foreign Affairs, March 11, 1781 (Wharton, IV, 280).

[3] Franklin to the President of Congress, March 12, 1781 (Wharton, IV, 281).

Part of this gift was to be employed for making purchases in

Adams, still unsuccessful in the Netherlands, did not receive even enough money to discharge the bills of exchange which Congress had drawn upon him and Laurens, but had to depend upon Franklin for their payment. He had no hope that these conditions would change until the independence of the United States should be acknowledged by the Republic.[1] He reported to Congress that people in the United Provinces were as yet so much afraid of being pointed out by the mob or the soldiery as favoring the loan which he had opened that there was no prospect of success for several months, if ever.[2]

In the following month the French foreign minister informed Laurens, the special minister of Congress at Paris, that Louis XVI was going to guarantee a loan of ten millions, to be opened in the United Provinces, in addition to the six millions which he had granted as a gift.[3] France thought that as soon as the Dutch withdrew their funds from England and placed them with the Americans, the resources of the English court would become exhausted. This loan was not to have anything in common with Adams' loan, and Neufville was, therefore, not to be connected with it in any way. The houses of Fizeaux and Grand were given the commission to negotiate it.[4] This loan, however,

France, while the rest was to be sent to the United States for establishing the credit of the government there. Washington alone was authorized to draw bills of exchange in America against this money (Bolles, Financial History, 241).

[1] J. Adams to the President of Congress, April 6, 1781 (Wharton, IV, 352); same to Franklin, April 16, 1781 (ibid., IV, 363).

[2] Same to the President of Congress, March 19, 1781 (ibid., IV, 314).

[3] J. Laurens to the President of Congress, April 9, 1781 (ibid., IV, 355).

[4] Vergennes to Vauguyon, April 13, 1781 (Sparks MSS., LXXXIII).

John Jay, before knowing that John Adams was authorized to execute the business which had been committed to Henry Laurens, also made attempts to raise a loan in the United Provinces. As soon as he learned of Adams' commission, he referred the firm of Neufville and Son, with whom he had negotiated, to him, since, he said, "the impropriety of two loans at a time" was evident (Jay to the President of Congress, April 25, 1781, in Wharton, IV, 385, 386). If Jay had not withdrawn, there would have been under consideration three loans for the United States in the Netherlands at the same time, of which none had any prospect of success.

was also a complete failure. The Dutch seemed to have no inclination at all to risk their money in American funds,[1] whereupon Louis XVI decided to supply the ten millions out of his own treasury.[2] The French ambassador at the Hague now asked the States General to guarantee the ten million loan for the United States in the Republic. The Grand Pensionary, however, thought that this step would not be successful, since the dismissal of Necker, which occurred at this time, had struck a mortal blow to the political as well as financial credit of France.[3] The French proposition was then modified. The money was to be loaned to the King of France under the guarantee of the States General at four per cent. interest.[4]

Franklin by this time had grown almost bitter toward the United Provinces, expecting but little from them to the advantage of the United States. Though the Dutch had been in the same situation as the Americans and were then glad to receive assistance from other nations, they did not seem to feel for the United States, or to have the least inclination to help. In his opinion the Dutch lacked magnanimity,[5] but a few days later, Franklin almost apologized for these remarks, saying that he had been out of humor when he made them, because the United States could obtain no loan in the Republic, while England borrowed freely there.[6]

Toward the end of August, the American correspondent at the Hague was able to report that the French loan in the United Provinces for the United States would probably suc-

[1] J. Laurens to the President of Congress, May 15, 1781 (Wharton, IV, 416, 417); J. Adams to same, May 16, 1781 (ibid., IV, 420). Van der Capellen assured Congress again that four fifths of his countrymen were friends of the United States, and that their indifference regarding the American loan was due to bad news from America, etc. (Van der Capellen to Livingston, May 25, 1781, in Beaufort, Brieven van der Capellen, 249–252).

[2] Vergennes to J. Laurens, May 16, 1781 (Wharton, IV, 418); Doniol, Histoire, IV, 559; Bolles, Financial History, 252.

[3] Thulemeier to Frederick II, July 31, 1781 (Bancroft MSS., Prussia and Holland).

[4] Same to same, August 31, 1781 (ibid.).

[5] Franklin to Dumas, August 6, 1781 (Wharton, IV, 625).

[6] Franklin to Dumas, August 10, 1781 (ibid., IV, 627).

ceed, since the States General were going to pass upon it. The latter might open it themselves on their own credit, guaranteeing the payment of the capital and the interest at four per cent. It was still a secret that the loan was intended for the United States.[1] The Prussian envoy at the Hague also learned of the success of this loan, and thought that it would be very helpful to the United States. Great Britain would find in this occurrence a new motive for regretting the inconsiderate rupture with the Netherlands.[2] Franklin, at Paris, was still skeptical about the success of the loan,[3] and in fact Dumas had to admit toward the middle of October that so far as he knew only the provinces of Holland and Friesland had consented to the loan proposed by France.[4] In November Franklin reported that the affair was said to be at last concluded, but it was not yet executed.[5] In reality, however, it had not made much progress, when the news of Cornwallis' surrender reached the United Provinces.

A change in favor of the United States was now expected to take place in the Republic, and, in fact, it began by the depreciation of English securities, with which especially Amsterdam was filled. The consolidated funds, "the true thermometer of the credit of England," fell to fifty per cent., while they formerly had been quoted at one hundred and fourteen.[6] The province of Zealand now also consented to the French loan. Adams' loan, on the other hand, rested as it was.[7] He had received only a few thousand guilders in all, and these he reserved for the relief of Americans

[1] Dumas to the President of Congress, August 23 and 30, 1781 (Wharton, IV, 655, 657).
[2] Thulemeier to Frederick II, September 11, 1781 (Bancroft MSS., Prussia and Holland).
[3] Franklin to Morris, September 12, 1781 (Wharton, IV, 704).
[4] Dumas to the President of Congress, October 11, 1781 (ibid., IV, 771, 772).
[5] Franklin to the President of Congress, November 5, 1781 (ibid, IV, 827).
[6] Thulemeier to Frederick II, November 20, 1781 (Bancroft MSS., Prussia and Holland).
[7] J. Adams to the President of Congress, October 15, 1781 (Wharton, IV, 777).

escaping from English prisons.[1] The Dutch firm of John de Neufville and Son offered to the American commissioners at Paris a loan of two million guilders, but their conditions were such that they could not be accepted.[2]

Adams found that there were four persons in the Republic who had the whole affair of public loans in their hands and that they refused to sanction a loan to the United States until peace was restored. These men, he suspected, were receiving salaries for opposing American loans, or at least were being supported by a combination consisting of the British government, Dutch court, owners of English stocks, and great mercantile houses, in the interest of the British ministry.[3] Adams was therefore of opinion that the United States would not obtain any loan in the United Provinces until a treaty should be made.[4]

The French loan of five million guilders for the United States was in the meantime completed in the Republic, but only a comparatively small part of it remained available for Congress, most of it being expended for advances made by France.[5] Van der Capellen thought that the credit of America was growing considerably in the United Provinces.[6] Franklin also was better satisfied, saying that there was some prospect of another loan there;[7] but Adams almost despaired of success. "I can represent," he said, "my situation in this affair of a loan by no other figure than that of a man in the midst of the ocean negotiating for his life

[1] J. Adams to the President of Congress, December 4, 1781 (Wharton, V, 37). He had ordered a hundred pounds for President Henry Laurens, who was still imprisoned in the Tower of London. Adams, solicited by Laurens' daughter for further supplies, referred her to Franklin (ibid., V, 37).

[2] Franklin to J. Adams, December 14, 1781 (ibid., V, 46–48).

[3] J. Adams to Franklin, January 25, 1782 (ibid., V, 131); Bolles, Financial History, 253.

[4] J. Adams to Livingston, February 14 and 19, 1782 (Wharton, V, 163, 187); Bolles, Financial History, 254.

[5] Thulemeier to Frederick II, December 21, 1781 (Bancroft MSS., Prussia and Holland); Livingston to General Green, January 31, 1782 (Wharton, V, 142).

[6] Van der Capellen to J. Adams, May 2, 1782 (Beaufort, Brieven van der Capellen, 291).

[7] Franklin to Jay, April 24, 1782 (Wharton, V, 327).

among a school of sharks. I am sorry to use expressions which must appear severe to you, but the truth demands them."[1]

In the next month, however, he was able to report upon negotiations which he was conducting with three firms regarding the opening of a loan.[2] These houses were Wilhem and Jan Willinks, Nicholas and Jacob van Staphorst, and De la Lande and Fynjé. The loan was to bear five per cent. interest, which, according to Adams, was a moderate rate, since, as he said, France gave as much and other powers much more. The whole amount of the loan was to be five million guilders, but Adams did not expect to obtain that sum for a long time. By Christmas, he said, he might obtain about one million and a half, but hardly more.[3] The contract was sent to Congress for ratification, and Adams hoped to receive thirteen to fourteen hundred thousand guilders upon the receipt of the ratification.[4] Congress approved the contract of the loan and ratified it in September. Adams was admonished to try his utmost to have the whole amount raised, since the United States would need the money in any event. In case the war should continue, it would be essential for further exertions of the Americans, and if peace should be brought about, it would be greatly needed for discharging the army.[5] However, in July of the following year but three thousand of the obligations of the loan had been sold, which, Adams said, was due to the scarcity of money in the United Provinces. The loan was completed only in 1786.[6]

[1] J. Adams to Livingston, May 16, 1782 (Wharton, V, 420).
[2] Same to same, June 9, 1782 (ibid., V, 482).
[3] Same to same, July 5, 1782 (ibid., V, 594, 595).
[4] J. Adams to Livingston, August 18, 1782 (ibid., V, 665).
[5] Livingston to J. Adams, September 15, 1782 (ibid., V, 728, 729).
[6] J. Adams to Livingston, July 28, 1783 (ibid., VI, 608).
On August 7, 1783, van der Capellen wrote also that the American loan of five million guilders was not yet filled (Beaufort, Brieven van der Capellen, 653). During the year 1784, 1,488,000 guilders were received; in 1785, 134,000; and in 1786, 118,000 guilders; making it in all five millions, as had been stipulated (Bayley, National Loans, 17). This loan was not repaid until 1797.

A final French loan of six million livres was granted to the United States by resolution of September 14, 1782, bearing five per cent. interest.[1] In Spain also efforts were made to borrow money for the United States, but only a small sum was secured. The amount issued in 1781 was a trifle more than $174,000.[2] Although various other European countries were invited to assist the Americans with loans, no funds were received from the old world besides those mentioned.

John Adams had thus executed one part of his orders, that is, the arranging of a Dutch loan. True, he had experienced many failures before he reached the goal, but the money was now needed by the United States as much as ever. He was not less successful in executing the rest of his instructions. Early in 1781, the province of Friesland had resolved to acknowledge the independence of the United States. Adams thought it now opportune to disclose his public character to the States General and open, if possible, the negotiations between the two republics. In this matter he approached the French ambassador at the Hague, soliciting his assistance.[3] He addressed, on April 19, 1781, a long memorial to the States General, in which he informed them of his appointment as minister plenipotentiary of the United States "to reside near" them and of his instructions to negotiate a treaty of commerce and amity with the United Provinces. At the same time he explained in detail why such a treaty should be concluded as being in the interest and to the advantage of both countries.[4] A shorter note of the same tenor was directed to the Prince of Orange,

A number of loans were taken up in the United Provinces by the United States after peace was restored; this continued until 1794. Their discussion, however, would be beyond the scheme of this essay. See De Knight-Tillman, History of the Currency, 31 ff.; Bayley, National Loans, 17 ff.

[1] De Knight-Tillman, History of the Currency, 31.

[2] De Knight-Tillman, History of the Currency, 30.

[3] J. Adams to de la Vauguyon, March 1 and April 16, 1781 (Wharton, IV, 270, 271, 364).

[4] Wharton, IV, 370–376; pamphlet, "Adams' Memorial;" A Collection of State Papers, pamphlet 1; Vaterlandsche Historie, XXVIII, 33.

expressing also the American minister's desire to be received by the stadtholder for the delivery of the credentials.[1]

Adams' memorial caused much discussion as to whether closer relations with the United States would be advantageous to the United Provinces. For many reasons, one anonymous author said, it was to the interest of the Dutch to conclude a commercial treaty with the United States. Many products of America, in his opinion, were suitable for Europe, and this trade could be greatly increased after the hostilities had ceased. Agriculture was very extensive in the United States, the products of which could be exchanged in Europe for manufactured articles. There was a large importation of tobacco from Virginia, rice and indigo from Carolina, grain from Pennsylvania, etc. In return for these goods the Dutch could send to the United States linen and cloth (lakens), the products of the United Provinces, and cotton and wool, imported from the Dutch colonies; while silk, which was much bought in America, could be provided from Germany and France. The articles of the East India Company, tea, china, etc., were also much in demand with the Americans. The author concluded, therefore, that the United Provinces in gaining the American trade would not only further Dutch navigation, since the carrying of the goods from and to the United States would almost wholly be effected in Dutch bottoms, but Dutch industry and commerce would be promoted as well. There was danger, however, that American commerce might seek other channels, and a treaty should now be concluded with all possible speed, especially since the equality of both republics, their freedom of politics and religion invited to closer relations.[2]

Another Dutch writer tried to prove that a treaty with the United States would be utterly disadvantageous to the United Provinces. As the Americans, he declared, had no

[1] J. Adams' Memorial to the Prince of Orange, April 19, 1781 (Wharton, IV, 377).

[2] Pamphlet: Memorie wegens het commercieele belang etc. van commercie met de Vereenigde Staaten van Nord-Amerika.

navy worth mentioning and only a few privateers, they could not render any assistance to the Republic, either in the West Indies or in Europe; otherwise they would have defended St. Eustatia in their own interest. Besides, Dutch commerce could not gain during the war; on the contrary it was cut off by the war and especially by the capture of St. Eustatia. It would be folly to think of a direct trade with the United States, because it would require continual convoys and a large fleet on the American coast. Indirect trade, however, was precluded as well, since St. Eustatia, Berbice, Essequibo, and Demerari were taken. Of the two remaining Dutch colonies, Surinam was not convenient as a staple place and Curaçao could be of no use at present. How unsafe and unprofitable the American trade was, the author stated, was fully shown by the fact that the French mercantile vessels were almost all captured either on their way to America or coming back. Of many hundreds of vessels only twenty-five to thirty had reached France again. He then set forth what the result of a treaty with the United States would be after peace had been restored, mentioning three possibilities: America would either be victorious, or defeated and subdued, or it might be divided up between England, France, and Spain. If such a division should occur, the United Provinces, by a treaty, would be prevented from sharing in it. In case the Americans should be subdued by England, they would not be able to fulfil their treaty obligations toward the United Provinces. It was improbable, he continued, that the United States would be victorious, since England would never recognize the independence of her former American colonies. But even if the Americans should gain independence and the United States have the most advantageous treaty with them (which, however, very likely France would have), the American trade would prove injurious to the Dutch. The exchange of Dutch products for money or goods was very small. On the other hand their principal business, the carrying trade, would not profit from the independence of

America, since the Americans, having no sound or channel to pass through, would become formidable competitors. They could sail with all winds and in all seasons. Furthermore the United States would not buy through the United Provinces what they could obtain directly from France, Spain, or England. No treaty, he said, would induce American merchants to do so. For trade with America remained then only the few goods which were sent down the rivers Rhine and Maas from Germany to the United Provinces, but these might easily be fetched by the Americans in their own vessels. From all these considerations this author drew the conclusion that a treaty with America would do the Dutch harm rather than good. The Americans would preserve English institutions, especially with regard to legal matters and courts, since their language was the same; and they would, therefore, also remain in closer commercial relations with England than with any other nation.[1]

John Adams again suggested to Vauguyon that the United Provinces should be invited to join the French-American alliance,[2] while the Prussian envoy at the Hague thought that the French ambassador was taking up this project. Thulemeier, however, doubted that a treaty between the two republics could be brought about, since the Prince of Orange had discussed the subject with him in a manner which proved the strong opposition of the stadtholder to such a measure.[3] The French ambassador thought it not even advisable yet for Adams to deliver his credentials. When the latter disclosed to Vauguyon his intention of doing so, the Frenchman said that he had no instructions from his government to express an opinion about the matter, but that privately he did not think the present moment favorable for the step.[4]

[1] Pamphlet, Consideration op de Memoria etc., 19 April 1781 (August L. Schlözer, Briefwechsel meist historischen und politischen Inhalts, 130–149).

[2] Wharton, IV, 397 ff.

[3] Thulemeier to Frederick II, April 20, 1781 (Bancroft MSS., Prussia and Holland); same to same, April 24, 1781 (ibid.).

[4] Vauguyon to Vergennes, April 21, 1781 (Sparks MSS., LXXXIII).

Adams, however, did not heed Vauguyon's advice. At the beginning of May he had a conference with the Grand Pensionary, who told him that his recognition as American minister might be difficult, since the United Provinces had not yet acknowledged the independence of the United States. Although Adams had thus received little encouragement, he tried, on the following days, to deliver his credentials to the Dutch officials. All declined more or less politely to receive them. The Grand Pensionary who was to have a copy of the original said that it was not customary to deliver the paper to him but that it would be better to hand it to the griffier of the States General. The president of the latter body, to whom Adams went next, refused to accept the papers on the ground that such an act implied an acknowledgment, the responsibility for which he could not take upon himself. The president, however, promised to report the case to the States General. Thereupon Adams tried to deliver his memorial to the Prince of Orange through the latter's privy counsellor, but received the envelope back unopened with "a polite excuse from the prince that he could not receive it till after their high mightinesses should have resolved if, and when, he was to be admitted in the character which he had set forth with them."

Adams now published his memorial in English, French, and Dutch. All the public papers in the United Provinces inserted it, and Dumas reported that it was generally known, and that it both pleased and puzzled everybody. The president of the States General kept his promise and forwarded Adams' request. As a result the deputies of all seven provinces demanded and received copies of the report, in order to transmit them to their regencies for deliberation and decision. When the American minister told Vauguyon of the steps which he had taken, the latter repeated his former remark that he did not think the time favorable for such a measure, but that, personally, he would

support it.[1] The French government approved of the ambassador's attitude. He was instructed not to take any steps toward the admission of Adams' credentials, but rather to try to convince him that the present circumstances were not favorable to his measure. Vergennes added that Vauguyon would probably not change Adams' intention, but that the ambassador's words would at least serve to justify the French proceedings if the American minister should place France under the necessity of making them known to Congress.[2] Vauguyon was also directed not to hesitate to tell the Dutch authorities that he did all in his power to dissuade Adams from delivering his credentials. In case the latter should again approach the French ambassador for advice in the matter, Vauguyon was to persuade him to withdraw his credentials quietly until circumstances should permit the States General to accept them.[3]

When this letter was written, Vauguyon had already informed the Dutch ministers that Adams had acted without the approbation of the court at Versailles. The ambassador said he deemed this measure necessary in order to show that his government did not mean to contribute to the embarrassment of the States General.[4] Vergennes now commissioned the French minister in the United States, de Luzerne, to inform Congress of the attitude and conduct of

[1] Dumas to the President of Congress, May 2, 4, 11, and 16, 1781 (Wharton, IV, 393, 394); J. Adams to the President of Congress, May 3, 7, and 16, 1781 (ibid., IV, 398, 401–403, 419); Resolution of the States General, May 4, 1781 (Sparks MSS., CIII); Thulemeier to Frederick II, May 15, 1781 (Bancroft MSS., Prussia and Holland).

Thulemeier thought that Adams would not be admitted yet because the Dutch government did not want to irritate England, and also because neither the northern powers, nor the court of Vienna, nor even Spain had recognized the independence of the United States (Thulemeier to Frederick II, May 8, 1781, in Bancroft MSS., Prussia and Holland).

The Prussian envoy also reported that Adams had given the Grand Pensionary to understand that a refusal of the Dutch government might cause the United States later to decline commercial relations with the United Provinces (Thulemeier to Frederick II, May 11, 1781, ibid.).

[2] Vergennes to Vauguyon, May 6, 1781 (Sparks MSS., LXXXIII).

[3] Vergennes to Vauguyon, May 11, 1781 (ibid.).

[4] Vauguyon to Vergennes, May 11, 1781 (ibid.).

France in this case. The French Foreign Secretary said that he was convinced that Adams would be censured for "his very awkward precipitation."[1] The prospect of the American cause in the United Provinces was thus not very bright, and it was even said that the States General had decided to refuse the admission of a minister from Congress.[2] The Prince of Orange also was still opposed to closer relations with the United States.[3]

The first opinion expressed openly in favor of a treaty with America and published in the United Provinces was that of Baron van der Capellen van de Marsch, who pleaded for an alliance with both France and America. Baron de Nagel, of Zutphen, also said that he would rather acknowledge the independence of the United States than form an alliance with France.[4]

About this time Adams received instructions and a commission from Congress with full powers to "confer, treat, agree, and conclude" a treaty of alliance between France, the United Provinces, and the United States.[5] The American minister communicated the news to Vauguyon, suggesting that they confer together on the subject. There were three ways, he said, to propose the treaty to the United Provinces. The French ambassador might open the negotiations in the name of his royal master, or both Adams and

[1] Vergennes to Vauguyon, May 17, 1781 (Sparks MSS., LXXXIII). Adams was later asked "with friendly and patriotic anxiety" by Livingston to report about the motive which had prompted him to make the proposition of May 4, 1781, and to print the memorial. He gave then a vivid and detailed account of his reasons (J. Adams to Livingston, February 21, 1782, in Wharton, V, 193–199). The subsequent events showed that Adams was a better judge of affairs than Vauguyon.

See on this subject also Doniol, Histoire, IV, 562, 563; V, 48–57.

[2] Thulemeier to Frederick II, June 12, 1781 (Bancroft MSS., Prussia and Holland).

[3] Thulemeier to Frederick II, July 3, 1781 (Bancroft MSS., Prussia and Holland).

[4] J. Adams to the President of Congress, November 1, 1781 (Wharton, IV, 813, 814; A Collection of State papers, pamphlet 2). Baron van der Capellen van de Marsch strongly supported also Adams' demand of an answer (Wharton, V, 246, 247; A Collection of State Papers, pamphlet 5).

[5] Resolves of Congress, Comprising the Instructions to John Adams, August 16, 1781 (Wharton, IV, 636–638).

Vauguyon might do so jointly, or, finally, Adams alone might propose the treaty as a consequence of his former suggestion of a similar treaty.[1]

Adams' instructions had been accompanied by a report of Cornwallis' surrender, and he remarked to Franklin how easy a thing it would be to bring the war to a happy conclusion, if only Spain and the United Provinces would cooperate with the United States and France with the sincerity of the latter power.[2] The American minister apparently had great hopes for the conclusion of an alliance between the United States, France, and the United Provinces against England. He informed Jay, the American commissioner in Spain, that there would probably soon be a proposal of such a triple alliance, and if Spain would join and make it quadruple, it would be so much the better.[3] When, at the beginning of December, Adams acknowledged the receipt of the instructions to Congress, he was not so hopeful regarding the conclusion of a treaty with the United Provinces. "The Dutch," he said, "are so indolent, so divided, so animated with party spirit, and above all so entirely in the power of their chief, that it is very certain that they will take the proposition ad referendum immediately and then deliberate upon it a long time." The news of Cornwallis' defeat, however, he continued, had made a great impression upon the Dutch, so that his proposition, if made immediately, would have a great effect. This he could not do, because he was compelled to wait for the approval of the French court.[4] So far, Vauguyon had only referred to the American proposition as "very well considered."[5]

About the middle of December, Adams was able to write to Congress that the first public body in the United Provinces had proposed an alliance with the United States. It was the quarter of Oostergoo. This, the minister said, was only a

[1] Adams to Vauguyon, November 25, 1781 (Wharton, V, 3, 4).
[2] J. Adams to Franklin, November 26, 1781 (ibid., V, 7, 8).
[3] J. Adams to Jay, November 28, 1781 (ibid., V, 32).
[4] J. Adams to the President of Congress, December 4, 1781 (ibid., V, 36, 37).
[5] Adams to Jay, November 26, 1781 (ibid., V, 10, 11).

part of one branch of the sovereignty, but the whole Republic must follow. "It is necessitated to it by a mechanism as certain as clock work; but its operations are and will be studiously and zealously slow. It will be a long time before the measure can be completed."[1]

The French ambassador at the Hague grew more communicative now. He called on Adams in Amsterdam and suggested that the latter should go to the Hague and demand an answer from the States General regarding his former proposition. After that the American minister, according to Vauguyon's advice, was to visit the cities of Holland, and apply to their regencies.[2] Adams went to the Hague on January 8, and, on the following day, called upon the president of the States General, demanding verbally a categorical answer to his memorial regarding a treaty of commerce and amity and the presentation of his credentials. The president, van der Sandheuvel, reported Adams' request to the States General and the matter was again taken ad referendum.

Not a single province had so far answered the minister's memorial. The Grand Pensionary, Bleiswijck, was ill and could not be seen by Adams. The latter then visited the deputies to the States General from all the cities of the province of Holland, who without exception received him very kindly, but were unable to make definite promises.[3] Van der Capellen tot den Poll, who had just shown again his love for the United States by offering twelve thousand florins to Adams' loan in preference to that guaranteed by

[1] J. Adams to the President of Congress, December 14, 1781 (Wharton, V, 49, 50); A Collection of State Papers, pamphlet 3.

[2] J. Adams to the President of Congress, December 18, 1781 (Wharton, V, 55).

Count de Vergennes approved of this course to be taken by Adams (Vauguyon to Adams, December 30, 1781, in Wharton, V, 79, 80).

[3] Adams to the President of Congress, January 14, 1782 (Wharton, V, 97–99); A Collection of State Papers, pamphlet 4; Resolution of the States General, January 9, 1782, and Resolution of Holland and Westfriesland (Sparks Dutch Papers); Thulemeier to Frederick II, January 11, 1782 (Bancroft MSS., Prussia and Holland); Vaterlandsche Historie, XXIX, 127.

France, was furious at the slow advance of the American cause in the United Provinces, and even exclaimed that he was ashamed to be Dutch. Van der Capellen, too, had suggested that Adams should demand a categorical answer from the States General to his memorial, since many people in the Republic desired an alliance with America.[1] Adams himself found his office more and more distasteful and wished "every hour in the twenty-four" that he was back in the United States again.[2]

About a week after Adams had written in such despairing terms the province of Friesland publicly acknowledged the independence of the United States. Several cities of the province of Holland and the whole Republic were expected soon to follow this example.[3] Adams now began to think of transferring his residence from Amsterdam to the Hague, in order to be in closer touch with the Dutch government. For this reason he purchased a "large and elegant house in a fine situation on a noble spot of ground" at the Hague for about sixteen thousand guilders.[4] It caused surprise in the

[1] Van der Capellen to Adams, January 6, 1782 (Beaufort, Brieven van der Capellen, 264, 265).

Regarding Adams' answer see Beaufort, Brieven van der Capellen, 266, 267. He said that the time was approaching very fast when the Republic must decide.

Van der Capellen tot den Poll to van der Capellen van de Marsch, January 17, 1782 (ibid., 266).

[2] J. Adams to Franklin, February 20, 1782 (Wharton, V, 189).

[3] Vaterlandsche Historie, XXIX, 129.

[4] J. Adams to Livingston, February 27, 1782 (Wharton, V, 206, 207).

This was the first legation building which the United States ever owned. Adams took the title in his own name, since the United States was not yet recognized by the United Provinces. As soon as this should be done and Congress approve of the transaction, the title was to be transferred to the United States. Adams could not pay the whole amount. He took for first payment the money of his loan and some cash which he had brought from America, in all ten thousand guilders. The rest was to be furnished by Franklin or to be borrowed from a friend. The American legation, or "Hôtel des Etats-Unis de l'Amérique," as it was officially called, was situated upon the Fleweele Burgwal, a canal street (J. Adams to Livingston, May 16, 1782, in Wharton, V, 420).

Besides the United States, only France and Spain owned legation buildings at the Hague, while all the other nations represented there rented houses for their ministers (Dumas to Livingston, April 4, 1782, in Wharton, V, 293).

United Provinces that Adams should take this step with the intention of establishing himself in his quality as American minister to the United Provinces before the States General had attributed this character to him.[1] In the beginning of March the deputies of Friesland proposed to the States General the admission of Adams as "minister of the Congress of North America."[2] As the Friesians were said to carry through everything that they undertook, it was generally thought that a treaty with the United States would soon be perfected. Adams himself did not share in this opinion.[3]

Neither did the French court think the acknowledgment of American independence by the Dutch in the near future probable, because there was nothing which rendered such a step necessary. The Foreign Secretary at Paris informed the French ambassador to the United Provinces that it was most important for France not even indirectly to promote such a measure. She could not wish, he said, to guarantee the consequences to the Republic which might result from the recognition of the United States.[4] Strange to say, Amsterdam was now opposed to closer relations with America. Van der Capellen attributed this to intrigues. He had also heard that Vauguyon was dissuading the Dutch from recognizing the United States, but this rumor, he declared, was without foundation. He would regret extremely if the United Provinces should neglect this opportunity

[1] Thulemeier to Frederick II, February 26, 1782 (Bancroft MSS., Prussia and Holland).

[2] Resolution of the States General, March 5, 1782 (Sparks MSS., CIII).

Friesland played a prominent part for the American cause by its enthusiasm for liberty. The students of the University of Franeker held a grand festival, celebrating the future of the young republic. Then the province was leading in the recognition of the independence of the United States and the admission of Adams as American minister. When finally the United States was recognized by the States General, the "Society of Citizens" at Leeuwarden, on May 8, 1782, resolved to have a medal struck in commemoration of the event (Griffis, Brave Little Holland, 231; Collection of State Papers, pamphlet 24).

[3] J. Adams to Livingston, March 11, 1782 (Wharton, V, 234–236).

[4] Vergennes to Vauguyon, March 7, 1782 (Sparks MSS., LXXXIII).

for furthering their commerce, navigation and industry.[1] Many petitions from Dutch manufacturers and merchants, and also from the municipalities of cities, such as Dort and Leyden, were directed to the authorities of the separate states and even to the States General, demanding closer commercial relations with the United States and the admission of Adams.[2] The growing popular sentiment in favor of America was now soon to prompt a decision in the United Provinces.

The second province which urged the States General to admit Adams as minister plenipotentiary of the United States was Holland and Westfriesland. The provincial assembly passed a resolution to this effect on March 29, 1782,[3] and communicated it immediately to the States General, at the same time making it known to Adams through the Grand Pensionary. Adams thanked that official very warmly and expressed the hope that the other provinces would soon follow the example given by Friesland and Holland.[4] In a little more than three weeks this was accomplished. Overyssel followed on April 5,[5] Zealand on April 8, Groningen

[1] Van der Capellen to Valck, March 13, 1782 (Beaufort, Brieven van der Capellen, 272); same to A. M. Jansen, March 14, 1782 (ibid., 275).

[2] J. Adams to Livingston, March 19, 1782 (Wharton, V, 248 ff.; A Collection of State Papers, pamphlets Nos. 6 ff.); Vauguyon to Vergennes, March 15, 1782 (Sparks MSS., LXXXIII); Thulemeier to Frederick II, March 22, 1782 (Bancroft MSS., Prussia and Holland).

[3] Wharton, V, 258; Sparks MSS., CIII; A Collection of State Papers, pamphlet 17; Dumas to Livingston, March 29, 1782 (Wharton, V, 276); Thulemeier to Frederick II, March 29, 1782 (Bancroft MSS., Prussia and Holland).

[4] J. Adams to van Bleiswijck, March 31, 1782 (Wharton, V, 289). About this time extracts from van der Capellen's correspondence with the Americans were published in the Courant and caused great surprise and excitement in the United Provinces. The author was proud that his efforts for the American cause had not been without result. Still, he said, what could the friends of the United States have done if Adams had not been in the United Provinces? That the latter had been appointed by Congress minister plenipotentiary to the United Provinces, van der Capellen attributed to his letters to Trumbull and Livingston, in which he had recommended the sending over of an American envoy (Van der Capellen to Valck, in Beaufort, Brieven van der Capellen, 284).

[5] Van der Capellen to J. Adams, April 6, 1782 (Beaufort, Brieven van der Capellen, Aanhangsel, 59).

on April 9, Utrecht on April 10, Guelderland on April 17, and the States General finally resolved upon the admission of John Adams on April 19.[1] On April 22 the latter presented his credentials to the Prince of Orange, on which occasion nothing remarkable happened. Adams in his address to William V emphasized the friendly feelings existing in America for the United Provinces, and the prince answered in such a low and indistinct way that the American minister understood only the statement that the stadtholder had put no difficulty in the way of the reception.[2] A few days later Adams presented a memorial to the president of the States General, in which he formally proposed the conclusion of a treaty of amity and commerce between the United States and the United Provinces, and asked that a commission be appointed with full powers to negotiate with him on the subject.[3] The deputies for foreign affairs, thereupon, were instructed by the States General to confer with the American minister, which they did, receiving from him a draft of the treaty. Copies were sent to all the provinces for deliberation, and, at the same time, the original draft was referred to the deputies for naval matters for examination. After this committee should have obtained the advice of the col-

[1] Collection of State Papers, pamphlets Nos. 18 ff.; Sparks MSS., CIII, under dates of April 8 to 22, 1782; J. Adams to Livingston, April 19, 1782 (Wharton, V, 315–319).

The resolution of the States General of April 19, 1782, was in the following terms: "Deliberated by resumption upon the address and the ulterior address made by Mr. Adams the 4th of May, 1781, and the 9th of January of the current year to the president of the assembly of their high mightinesses, to present to their high mightinesses his letters of credence, in the name of the United States of North America, and by which ulterior address the said Mr. Adams has demanded a categorical answer to the end to be able to acquaint his constituents thereof; it has been thought fit and resolved that Mr. Adams shall be admitted and acknowledged in quality of envoy of the United States of North America to their high mightinesses as he is admitted and acknowledged by the present" (Wharton, V, 319).

[2] J. Adams to Livingston, April 22, 1782 (Wharton, V, 319, 320); Thulemeier to Frederick II, April 23, 1782 (Bancroft MSS., Prussia and Holland).

[3] J. Adams to Livingston, April 23, 1782 (Wharton, V, 325); Resolution of the States General, April 23, 1782 (Sparks MSS., CIII).

leges of the admiralty, a full report was to be presented to the States General for final decision.[1]

A perfect revolution had thus taken place in the inner politics of the United Provinces, the English party having lost ground completely, and the Prince of Orange being compelled to yield to public sentiment, which had grown decidedly anti-English. The Duc de la Vauguyon said that the Dutch nation had avenged itself "of all the political and other evils which the English have done them since Cromwell." The Spanish envoy expressed himself similarly in declaring that Adams "had struck the greatest blow which had been given in Europe for a long time."[2]

Adams thought now that it was time to do something for the men who had been especially helpful to him in bringing about the success of the American cause in the United Provinces and who hitherto had not received the reward they deserved. He mentioned, above all, Dumas, the American correspondent, whom he recommended for an appointment as secretary of legation and chargé d'affaires at the Hague. Then he called the attention of Congress to Mr. Thaxter, a gentleman whose "indefatigable application to the affairs of the United States, and whose faithful friendship" to Adams recommended him to the favor of Congress. Next, Edmund Jennings of Brussels was lauded, having "honored" the American minister "with his correspondence," and having been often serviceable to the United States. Finally Adams praised M. A. M. Cerisier, "one of the greatest historians and political writers in Europe, author of the 'Tableaux de l'Histoire des Provinces Unies des Pays Bas,'" and of the "Politique Hollandois." His pen, the minister said, had erected a monument to the American cause more glorious and more durable than brass or marble. "I have had no money," Adams concluded, "but my salary, and that has been never paid me without grudging. If I have friends in Europe, they have not most certainly been made

[1] Secret Resolutions of the States General, April 26, 1782 (Sparks Dutch Papers).

[2] Dumas to Livingston, May 10, 1782 (Wharton, V, 409).

by power, nor money, nor any species of corruption, nor have they been made by making promises, or holding out alluring hopes. I have made no promises, nor am I under any obligation but that of private friendship and simple civility to any man, having mentioned such as have been my friends because they have been friends to the United States, and I have no other, in Europe at least, and recommended them to the attention of Congress, as having rendered important services to our country, and able to render still greater."[1]

In the meantime the deputies for naval matters had deliberated upon the projected treaty with the United States, and considered the advice of the colleges of the admiralty. They proposed some slight changes in Adams' draft, which had to be submitted to the latter for examination and approval.[2] Since all the provinces had to pass upon the treaty bill, the American minister thought that it would be three months before the treaty itself would be signed. An alliance between the two republics had not yet been proposed by him, since he waited for the advice of the French ambassador,[3] who apparently was not in a hurry to give it.[4] In a conference with the Grand Pensionary Adams suggested that the United Provinces should send an ambassador to Congress, and consuls at least to Boston and Philadelphia. Mr. van Bleiswijck answered that it was difficult to find a man who was able to act as ambassador and at the same time willing to undertake such a long voyage.[5] Adams became now the recipient of many attentions in the United Provinces. The

[1] J. Adams to Livingston, May 16, 1782 (Wharton, V, 420–423). Dumas was not proposed to Congress as American chargé d'affaires, Livingston establishing the principle that a foreigner should not act as regular representative of the United States abroad, and that such positions must be filled by Americans (Livingston to the President of Congress, September 12, 1782, in Wharton, V, 719).

[2] Resolution of the States General, May 21, 1782 (Sparks Dutch Papers).

[3] J. Adams to Livingston, June 9, 1782 (Wharton, V, 482).

[4] The French court was against the alliance, preferring not to have their hands bound (Adams to Livingston, September 6, 1782, in Wharton, V, 706).

[5] J. Adams to Livingston, June 15, 1782 (Wharton, V, 495).

merchants of the city of Schiedam sent a deputation inviting him to an entertainment in his honor and sending congratulations to Congress.[1]

At about the middle of August, the treaty of amity and commerce was passed by the provinces, and the States General proposed final conferences with the American minister.[2] At last, on October 8, 1782, the treaty and a convention concerning recaptures were signed by both parties at the Hague and sent to America for the ratification of Congress.[3] Both documents were signed by Congress on January 23, 1783,[4] and returned to the United Provinces, where they arrived in May. In the absence of Adams, who had been commissioned to Paris in order to take part in the peace negotiations there, Dumas, acting for the American minister, exchanged the ratifications with the States General of June 23. On the same day van Berckel, burgomaster of Rotterdam and brother of the pensionary of Amsterdam,[5] having been appointed minister plenipotentiary of the States General to Congress, set sail for the United States.[6]

The conclusion of the treaty with the United Provinces was a signal success for the United States. The Dutch Re-

[1] J. Adams to Livingston, July 5, 1782 (Wharton, V, 595–597).

[2] Dumas to Livingston, August 16, 1782 (ibid., V, 662).

[3] J. Adams to Livingston, October 8, 1782 (ibid., V, 803, 804); Secret Resolution of Holland and Westfriesland, October 17, 1782 (Sparks Dutch Papers).

[4] They are printed under this date in the Journal of Congress (Wharton, V, 805). The ratification by the States General is dated December 27, 1782 (Sparks Dutch Papers).

[5] Davies, History of Holland, III, 479.

[6] J. Adams to Livingston, May 30, 1783 (Wharton, VI, 457); Dumas to the States General, June 5, 1783 (ibid., VI, 476, 477); Dumas to Livingston, June 23, 1783 (ibid., VI, 502).

Regarding the appointment of a Dutch envoy to the United States see also: Adams to Livingston, June 15, 1782 (Wharton, V, 495); Resolution of Holland and Westfriesland, December 12, 1782 (Sparks Dutch Papers); Dumas to Livingston, December 12, 1782 (Wharton, VI, 130); same to same, January 11, 1783 (ibid., VI, 204); same to same, January 20, 1783 (ibid., VI, 221); same to same, March 14, 1783 (ibid., VI, 271).

For the reception of van Berckel by Congress see: Secret Journal of Foreign Affairs, October 25, 1783 (Wharton, VI, 714) and van Berckel's reports of October 20 and November 4, 1783, both received by the States General on December 22, 1783 (Sparks Dutch Papers).

public was the first nation, after France, to enter into closer relations with America. There was, however, a vast difference between the two agreements. With France, the treaty was in some degree an act of charity and had been felt as such by the United States, but with the United Provinces the parties had negotiated as equals. Furthermore the recognition of American independence by the Dutch and the conclusion of the treaty between the two republics established the value of the United States in the eyes of the world, thereby marking a step forward in the independent national life of the new commonwealth.[1]

[1] Trescot, Diplomacy of the Revolution, 89–91.

The United Provinces were soon to discover that this treaty with America was not of material advantage to them. The United States proved to be rivals rather than customers of the Dutch Republic. By 1786 they had taken away from the Dutch a considerable portion of the trade to China. American merchants also established a flourishing though illicit commerce with the Dutch West Indian colonies, Surinam, and the Cape of Good Hope, thereby greatly decreasing the trade between the United Provinces and their colonies (Davies, History of Holland, III, 479, 480).

CHAPTER IX.

Peace.

Not having succeeded in concluding a separate peace with the United Provinces, England tried to sever France from the rest of her enemies by offering a separate peace to her. In case this should not be feasible, England proposed a general peace.[1] The Duc de Vergennes flatly declined to enter upon negotiations regarding separate peace and declared that it would be the privilege of France and her allies to make the propositions for peace which they considered acceptable.[2] The Dutch, hoping that France, while negotiating for a general peace, would also defend their interests, asked Louis XVI to make assurances in this respect. He answered evasively that he made it an unalterable law to guard carefully the interests essential to the dignity and prosperity of the United Provinces.[3] When it was understood that Great Britain had authorized Mr. Oswald and the English ambassador at Paris, Fitzherbert, to treat with the four powers at war with her,[4] the States General chose Mr. de Brantzen as special minister to support the Dutch minister at Paris, Lestevenon de Berkenrode,[5] in negotiating for peace.[6] The two plenipotentiaries of the Republic were to negotiate with England on the basis, first of all, that the Dutch, in conformity with the principles of the Armed Neutrality, as a conditio sine qua non, were " in

[1] Secret Resolution of the States General, May 21, 1782 (Sparks MSS., CIII).

[2] Berkenrode (Dutch envoy at Paris) to the States General, May 26, 1782 (Bancroft MSS., America, Holland, and England).

[3] Berkenrode to the States General, July 14, 1728 (Bancroft MSS., America, Holland, and England).

[4] J. Adams to H. Laurens, August 15, 1782 (Wharton, V, 662); same to Dana, September 17, 1782 (ibid., V, 732).

[5] J. Adams to Livingston, August 18, 1782 (ibid., V, 665).

[6] J. Adams to Jay, August 17, 1782 (ibid., V, 664).

full possession and indisputable enjoyment of the rights of the neutral flag and of free navigation;" that naval stores should henceforth be regarded as free merchandise and not contraband; that all Dutch possessions taken by the English were to be restored to the United Provinces; and that losses, "unjustly" caused by Great Britain, should be indemnified by the latter.[1] Of the other powers the Count d'Aranda was to represent Spain in the peace negotiations at Paris; Franklin and Jay, the United States.[2] When Berkenrode and Brantzen, however, handed a copy of their credentials to Fitzherbert, he declared that he did not yet have sufficient instructions from his government,[3] and it soon became evident that England would not be inclined to restore all of her conquests of Dutch territory. Count de Vergennes had sent a special ambassador, M. de Rayneval, over to Great Britain, in order to sound the English ministry regarding the sincerity of their desire for peace. This diplomat reported that Lord Shelburne had declared that England would keep the Dutch fort Trinconomale on the coast of Ceylon because it suited her well.[4] Difficulties were also encountered with another of the conditions of the United Provinces. Vergennes told their plenipotentiaries that a failure of the negotiations, or at least a long delay, would be likely if the States General insisted on free navigation according to the principles of the Armed Neutrality as a conditio sine qua non. England would most certainly not grant it, since, in this form, it would involve a general law. He proposed, therefore, that the Dutch should merely mention free navigation as one of their conditions for peace, without adding to it the obnoxious clause regarding the treaty of the Armed Neutrality.[5] In fact, Fitzherbert, a

[1] Wharton, V, 665, 666; Secret Resolution of the States General, August 19, 1782 (Bancroft MSS., America, Holland, and England).
[2] J. Adams to Livingston, September 23, 1782 (Wharton, V, 751).
[3] Berkenrode and Brantzen to the States General, September 19, 1782 (Bancroft MSS., America, Holland, and England).
[4] Conferences of M. de Rayneval with Lord Shelburne, October, 1782 (Wharton, V, 821).
[5] Berkenrode and Brantzen to the States General, November 7, 1782 (Bancroft MSS., America, Holland, and England).

few days later, received information from his government that the Dutch conditio sine qua non would not be considered.[1] The English ambassador also hinted to the Dutch plenipotentiaries that the conditions of the States General, as they were now, would never be accepted by Great Britain, and recommended their modification before they should be formally presented to him.[2] This advice, however, was not heeded, and the conditions remained practically unchanged, even the article concerning free navigation, on the ground that full enjoyment of free navigation according to the principles of the Armed Neutrality had been proposed to the United Provinces in an official letter which the English secretary of state, Fox, had addressed to Simolin, the Russian ambassador at London, on May 4, 1782.[3]

In the meantime John Adams had joined Franklin and Jay in Paris to take part in the peace negotiations. At the beginning of December Adams verbally informed the Dutch plenipotentiaries that the preliminaries, as far as the United States and Great Britain were concerned, had already been signed on November 30, 1782,[4] but that definitive peace was only to be concluded in concurrence with the other belligerent powers. In a confidential appendix to their report regarding this conversation with Adams, Berkenrode and Brantzen stated that Louis XVI had promised to restore to the States General all Dutch territories which should be in the possession of France at the conclusion of peace.[5] The fear of the Dutch that they might eventually lose one or the other of their colonies which had been recaptured by the French from Great Britain was thus removed, but the

[1] Berkenrode and Brantzen to the States General, November 18, 1782 (Bancroft MSS., America, Holland, and England).

[2] See statement dated November 29, 1782, in Sparks MSS., XL.

[3] Articles presented by Berkenrode and Brantzen to Fitzherbert on December 6, 1782 (Sparks MSS., XL; Bancroft MSS., America, Holland, and England).

[4] J. Adams' Journal, December 3, 1782 (Wharton, VI, 103–105).

[5] Berkenrode and Brantzen to the States General, December 3, 1782 (Bancroft MSS., America, Holland, and England); van der Capellen to Valck, December 15, 1782 (Beaufort, Brieven van der Capellen, 418).

negotiations did not proceed as the States General wished. In the first interview which Berkenrode and Brantzen had with Fitzherbert after the presentation of the Dutch peace conditions, the Englishman flatly rejected the indemnity claims of the States General for losses at sea.[1] He confined himself to a discussion of this article, but it was to be expected that in the succeeding conferences he would deal with the other articles in a similar way. In the United Provinces the Dutch peace conditions were not generally approved. Van der Capellen thought it a mistake to demand free navigation as a sine qua non, since Great Britain had not even acknowledged to Russia the principles of the Armed Neutrality, and could not be expected to act differently toward the United Provinces. What then, he asked, was the use of insisting on a condition which would never be accepted?[2] France and England now reached an agreement also; and there was only one point of difference left between Spain and Great Britain,[3] so that little remained as far as these powers were concerned except the settling of the forms. Even France feared that the negotiations between the United Provinces and England might cause delay and embarrassment.[4] John Adams actively assisted the Dutch plenipotentiaries in Paris, whenever he could. He supported especially their claims regarding free navigation, as may be seen from his own words:—

"Unnecessary, however, as any exertions of mine have been, I have not omitted any opportunity of throwing in any friendly suggestions in my power where there was a possibility of doing any good to our good friends the Dutch. I have made such suggestions to Mr. Fitzherbert. But with Mr. Oswald I have had several very serious conversations upon the subject. So I have also with Mr. Vaughan and Mr. Whitefoord.

"To Mr. Oswald I urged the necessity of Great Britain's agreeing with the Dutch upon the unlimited freedom of navigation, from a variety of topics, some of which I may explain to you more particularly hereafter. Thus much I may say at present, that I told him

[1] December 6, 1782 (Sparks MSS., XL).

[2] Van der Capellen to Hooft, December 5, 1782 (Beaufort, Brieven van der Capellen, 410–412).

[3] J. Adams' Journal, December 5, 1782 (Wharton, VI, 109).

[4] Vergennes to Luzerne, the French envoy to Congress, December 19, 1782 (Wharton, VI, 152).

that it was impossible for Great Britain to avoid it; it would probably be insisted upon by all the other powers. France and Spain, as well as Russia, Sweden, Denmark, Prussia, the Emperor, and Portugal, as well as Holland, had already signed the armed neutrality. The United States of America had declared themselves ready to sign, and were ready. The combination being thus powerful, Great Britain could not resist it. But if she should refuse to agree to it with Holland, and the other powers should acquiesce, and Holland should make peace without it (which would never, however, be the case), yet all would be ineffectual, for Holland would forever be able to make use of other neutral bottoms, and would thus enjoy the benefit of this liberty and reality, though denied it by treaty and in appearance. It would, therefore, be more for the honor and interest of Great Britain to agree to it with a good grace in the treaty with Holland. Nay, the wisest part she could act would be to set on foot a negociation immediately for signing herself the treaty of the armed neutrality, and then admitting it into the treaty with Holland would be a thing of course. At one of these conversations Dr. Franklin was present, who supported me with all his weight; at another, Mr. Jay seconded me with all his abilities and ingenuity. Mr. Oswald has several times assured me that he had written these arguments and his own opinion, in conformity with them, to the King's ministers in London, and I doubt not they will be adopted."[1]

When Fitzherbert at last replied officially to the memorandum of the Dutch plenipotentiaries of December 6, the answer was such that it cast a gloom over the whole nation. Free navigation in conformity with the articles of the Armed Neutrality was rejected. It was admitted that Fox had proposed free navigation, but the question at stake had then been a separate peace between the two nations. The proposition of Mr. Fox was now void, since the Dutch had refused it. Great Britain, Fitzherbert stated, would return to the United Provinces all Dutch possessions in the hands of England at the conclusion of peace except Trinconomale on the island of Ceylon. Losses at sea, he declared further, could not be indemnified by Great Britain, because she had been compelled to make war upon the Republic and had not begun the hostilities deliberately.[2] On January 20, 1783, the preliminary articles of peace were signed by the representatives of England on the one hand, and France and

[1] J. Adams to Dumas, January 1, 1783 (Wharton, VI, 191–192).

[2] Berkenrode and Brantzen to the States General, January 5, 1783 (Bancroft MSS., America, Holland, and England); Lord Grantham to Fitzherbert, December 18, 1782 (Sparks MSS., XL).

Spain on the other. At the same time the cessation of hostilities was arranged by the ministers of these powers, to which measure the United States, through Franklin and Adams, also acceded.[1] The United Provinces were not yet ready to sign preliminaries,[2] but were included in the armistice.[3] That France had not delayed the signing of the preliminary treaty until the negotiations between the United Provinces and England were also concluded was bitterly resented by the Dutch, who now considered themselves abandoned by the French and delivered over to the hatred or mercy of Great Britain.[4] Vergennes assured the Republic again, that France would not conclude peace with England definitely, unless the United Provinces were included. The preliminary treaty, he said, had been necessary, because the United States were exhausted and had asked through Franklin for twenty millions to be able to carry the war through another campaign. France, however, was not in a position to grant this loan. Taxes, he further explained, could not be increased in America, since this might cause an insurrection and jeopardize everything. Spain was also exhausted and absolutely demanded the conclusion of the preliminary agreement.

The only important point which the Dutch, so far, had gained during the negotiations was that England had renounced Trinconomale, but she demanded Negapatam instead. The States General, however, were decided not to grant this, and still insisted upon free navigation.[5] The negotiations had thus arrived at a dead-lock. The States

[1] English Commissioners' Declaration of the Cessation of Hostilities, January 20, 1783 (Wharton, VI, 223, 224).

[2] Franklin to Livingston, January 21, 1783 (Wharton, VI, 225).

[3] Vergennes to Luzerne, January 22, 1783 (Doniol, Histoire, V, 278); Berkenrode and Brantzen to the States General, January 23, 1783 (Bancroft MSS., America, Holland, and England).

George III proclaimed the cessation of hostilities on February 14, 1783, including the United States, France, Spain, and the United Provinces (Wharton, VI, 251, 252); Groot Placaatboek, IX, 159.

[4] Van der Capellen to Jansen, January 29, 1783 (Beaufort, Brieven van der Capellen, 496–499); same to Tegelaar, February 13, 1783 (ibid., 516, 517).

[5] Dumas to Adams, February 4, 1783 (Wharton, VI, 235, 236).

General now thought of eliminating the question of free navigation from the peace conferences by proposing to France, Spain, and the United States a separate joint convention on the principles of the Armed Neutrality. Their High Mightinesses tried to secure the cooperation of the American ministers in Europe, who were willing to aid the States General as much as their instructions allowed,[1] but the whole plan failed. Meanwhile the negotiations made no progress, the United Provinces not yet being willing to make concessions of importance. In February the States of Holland and Westfriesland passed a resolution, according to which new instructions should be sent to Berkenrode and Brantzen.[2] The States General approved of it, though the provinces of Friesland, Zealand, and Groningen had not yet consented, which made the resolution unconstitutional.[3] Conferences were now held not only between the Dutch and English plenipotentiaries at Paris, but Brantzen sent his secretary, Mr. For, to England in order to negotiate there directly with the Foreign Secretary, Fox. Still no agreement was brought about at either place.[4]

As an expedient England was said to have proposed to France that the latter should cede to Great Britain the French island of Tabago in the West Indies, in which case England would restore Negapatam to the Dutch. It would be left to the French, then, to obtain a suitable compensation from the United Provinces, but Louis XVI, it was asserted, declined to turn Tabago over to Great Britain. "France,"

[1] Dumas to J. Adams, January 24, 1783 (Wharton, VI, 229, 230); same to same, January 28, 1783 (ibid., 232); J. Adams to Dumas, January 29, 1783 (ibid., 232, 233); Dumas to J. Adams, January 30, 1783 (ibid., 233, 234); same to same, February 4, 1783 (ibid., 235); J. Adams to Dumas, February 5, 1783 (ibid., 236); Dumas to Adams, February 18, 1783 (ibid., 255, 256); same to same, March 6, 1783 (ibid., 273); Dumas to Livingston, April 18, 1783 (ibid., 384); Livingston's Memorandum of June 3, 1783, etc. (ibid., 473, 474); Report of a Committee of Congress, June 12, 1783 (ibid., 482, 483).

[2] Resolutions of Holland and Westfriesland, February 21, 1783 (Sparks Dutch Papers).

[3] Dumas to J. Adams, March 4, 1783 (Wharton, VI, 272).

[4] Dumas to Livingston, May 8, 1783 (Wharton, VI, 416).

said van der Capellen, "in rejecting this proposition, gives evidence, that she does not consider the friendship of the Republic worth a small and deserted island."[1] The leader of the Patriots also mentioned these rumors to the French chargé d'affaires at the Hague, who said he did not believe in them. Bérenger defended the attitude of his country toward the Republic. France, he said, was by no means indifferent toward the friendship of the United Provinces, in whose prosperity and independence she took the most sincere interest.[2]

Toward the end of July, the situation relative to the Dutch-English negotiations was not materially changed. The following letter of the American minister at the Hague, who had returned from Paris after the preliminaries were signed and his business terminated there, describes excellently the state of affairs as far as the United Provinces were concerned:—

"It is the general opinion here, both among the members of the States and at the Hôtel de France, that the delays of the definitive pacification are contrived by the court of London in order to set all their instruments at work in this Republic to induce it to renew its ancient connexions with Great Britain, particularly their alliance, offensive and defensive, by which each power was bound to furnish the other, if attacked, a certain number of ships and troops. Against this the patriotic party is decided, and they are now very well satisfied with the grand pensionary, Bleiswick, because he openly and roundly takes their side, and the court is said to be discontented with him for the same reason. There is, no doubt, an intelligence and correspondence between the two courts of London and the Hague to bring about this point. The grand pensionary told me yesterday that the court of London desired it, and there were persons here who desired it, and he knew very well who they were; but that most certainly they would not carry their point. Van Berckel, Visscher, and Gyselaer all assured me of the same, and added that the fear of this had determined them not to send a minister to London, but to go through with the negociation at Paris, although they were all highly dissatisfied with the conduct of France, and particularly with that of the Count de Vergennes.

[1] Van der Capellen to Jansen, May 30, 1783 (Beaufort, Brieven van der Capellen, 606).

[2] Bérenger to van der Capellen, June 6, 1783 (Beaufort, Brieven van der Capellen, 609).

Doniol (Histoire, V, 283 ff.) tries to show in detail that France was very much occupied with the welfare of the United Provinces and anxious to obtain as favorable a peace for them as was possible under the circumstances.

"They all say he has betrayed and deserted them, played them a very bad trick (tour), and violated his repeated promises to them. They do not in the least spare M. Bérenger and M. Merchant, who conduct the French affairs here in the absence of the Duc de la Vauguyon, but hold this language openly and freely to them. These gentlemen have sometimes found it hard to bear, and have winced and sometimes even threatened; but their answer has been more mortifying still: 'Do as you please, drive the Republic into the arms of England if you will. Suppress all the friends of France, if you chose it.' And some of them have said. 'We will go to America.' They all say that France had the power to have saved them; that the acquisition of Tobago was no equivalent to France for the loss of the Republic, etc., etc., etc. They are all highly pleased with the conduct of their own ambassador, Brantzen, with his activity, intelligence, and fidelity. They all say that they would send a minister to London to negociate there, if they were sure of being able to carry an election for a man they could depend upon. But the court here would have so much influence in the choice that they would run a risk of sending a man who would insensibly lead them into a revival of the old ties with England, which they say is enslaving the Republic to that kingdom.

"I learn here from all quarters a confirmation of what I had learned before at Paris from M. Brantzen and the Duc de la Vauguyon, viz., that the Duke of Manchester had given them no answer, nor said a word to them for six weeks, in answer to the propositions they had made; among which was an offer of an equivalent for Negapatnam. They offered some establishments in Sumatra and Surat. Lately the Duke of Manchester has received a courier, and has given an answer that a real equivalent might be accepted. No answer is given to any other point, and this is vague; so that another courier must go to London and return. Parliament is now up, and perhaps the ministers may now be more attentive and less timorous."[1]

The belief, general in the Republic, that France had failed to put pressure upon Great Britain in favor of the Dutch and would finally conclude a separate peace with England, caused great apprehension to her adherents in the United Provinces.[2] It was evident that French influence was rapidly decreasing and that the Orangist, that is, English, party, was gaining correspondingly. The latter endeavored to detach the Republic entirely from France and to restore, by a revival of the alliance of 1674, the former friendly relations with England. Adams thought that the apparent change in the French policy was a blunder of Vergennes,

[1] J. Adams to Livingston, July 25, 1783 (Wharton, VI, 596, 597).

[2] Same to same, August 3, 1783 (ibid., VI, 632, 633); van der Capellen to Racer, August 5, 1783 (Beaufort, Brieven van der Capellen, 648–650); van der Capellen to Baron de Breteuil, September 1, 1783 (ibid., 655–665).

who did not know how to negotiate with free nations. "He can not enter into the motives," the minister said, "which govern them; he never penetrates their real system, and never appears to comprehend their constitution."[1]

With Vergennes' support the Dutch plenipotentiaries tried again to save Negapatam for the United Provinces, but their efforts were in vain. They offered to Great Britain the Dutch establishments on the west coast of Sumatra. England, however, refused on the ground that those territories would not be of the least use to her. She insisted on the cession of Negapatam and, besides, demanded unlimited free navigation in the East, that is to say, among the Dutch East Indian possessions. Furthermore, an agreement was to be made between the two nations relating to the commerce on the African coast. Berkenrode and Brantzen then offered an equivalent in money for Negapatam. For two months they did not receive an answer, and when it arrived it was a refusal. George III promised that Negapatam should be returned to the Dutch later, if a suitable compensation would be found. Seeing that England was decided not to make peace, unless Negapatam was ceded, the Dutch plenipotentiaries yielded in this point. They asked, however, that the conditions concerning free navigation in the eastern seas should be dropped, as well as the article regarding the salute to the English flag, which had also been demanded. The sea, the Dutch pleaded, was free and there was therefore no reason why a particular dominion over the sea should be recognized. The British negotiator still insisted on his conditions, although Vergennes now actively supported the Dutch ministers. Since all the other treaties were ready to be signed, the latter asked the States General for speedy instructions.[2]

Toward the end of August Vergennes informed Berkenrode and Brantzen that the court of Great Britain was urging the powers concerned to designate a day for the signing

[1] J. Adams to Livingston, July 31, 1783 (Wharton, VI, 623, 624).
[2] Berkenrode and Brantzen to the States General, August 13, 1783 (Sparks Dutch Papers).

of the definitive treaties. He said that he could not delay the conclusion of the final agreement any longer. France as well as Spain, he continued, was now compelled to keep a large quantity of troops in the field, which was a heavier strain on the finances of both countries than they could afford, while the uncertain political situation greatly damaged French commerce. In his opinion, all these evils were due to the delay of the negotiations caused by the indecision of the United Provinces. The Dutch plenipotentiaries protested, asserting that the delay had not been their fault and that the States General should be given sufficient time for deliberation. Thereupon the third of September was fixed as the day for the signature.[1]

The States General now instructed their plenipotentiaries again to represent to the English peace commissioner the injustice and unfairness of the British conditions, and to try all means to obtain better terms. Berkenrode and Brantzen were also to remind Vergennes of Louis XVI's promise not to separate his cause from that of the Republic, and to request his active cooperation for the sake of the United Provinces. The plenipotentiaries were authorized only in case all these efforts should fail, to comply with the English conditions, namely, the cession of Negapatam, free navigation in the eastern seas and the salute to the English flag on the high seas, but to concede only as much as was absolutely necessary in order to avoid an exclusion of the Dutch from general peace.[2]

After receiving these directions, Berkenrode and Brantzen called upon Vergennes, who informed them that he had already asked the British government to grant more moderate conditions to the Dutch, but that his request had not been complied with. He then called the attention of the commissioners to the services which France had ren-

[1] Berkenrode and Brantzen to the States General, August 25, 1783 (Bancroft MSS., America, Holland, and England).

[2] Secret Resolution of Holland and Westfriesland, August 26, 1783 (Sparks Dutch Papers); Secret Resolution of the States General, August 28, 1783 (Bancroft MSS., America, Holland, and England).

dered to the United Provinces in the saving of the Cape of Good Hope to the Dutch, in the recapture of their possessions in the East and West Indies, and other matters. The United Provinces, he said, had not been fortunate in their measures and the enemy, naturally, now took advantage of it. In 1763 France had been in the same position and had been compelled to accept the hard terms stipulated by Great Britain. Vergennes declared that he tried to delay the signing of the treaties, by informing England of the determination of Louis XVI not to make peace, unless the United Provinces were included. Nevertheless, circumstances made it necessary to come to a conclusion and to fix the date for the signatures.

The Dutch plenipotentiaries then had a conference with the Duke of Manchester, the special English peace commissioner at Paris. No understanding, however, could be reached. In order to have the Dutch-English preliminaries signed before the other powers concluded their definitive treaties, Berkenrode and Brantzen, on September 2, sent their treaty project to the Duke of Manchester.[1] It was immediately signed by the latter and by both Dutch plenipotentiaries.[2] The definitive treaty of peace between Great Britain and the United Provinces was concluded at Paris on May 20, 1784, being subsequently ratified at St. James on June 10, and at the Hague on June 15 of the same year.

The treaty contained eleven articles, of which the following were of importance: Article two stipulated that the vessels of the Republic should salute those of Great Britain in the same manner as before the war. According to article four the States General had to cede to England the city of

[1] Berkenrode and Brantzen to the States General, September 3, 1783 (Bancroft MSS., America, Holland, and England).

[2] Projet d'Articles Praeliminaires de Paix entre Sa Majesté le Roi de la Grande Bretagne et Leurs Hautes Puissances les Etats Généraux des Provinces Unies des Pais-Bas.—A la Haye. Chez Isaac Scheltus etc., 1783.

They were signed by the plenipotentiaries at Paris on September 2, 1783; by the respective governments at St. James on September 10, 1783, and at the Hague on September 26, 1783 (Sparks Dutch Papers).

Negapatam, but the latter was to be restored to the United Provinces, in case an equivalent should be offered. Article five provided for the restitution to the United Provinces of all their possessions that Great Britain or the English East India Company had conquered during the war. In article six the States General promised not to hinder the navigation of the subjects of England in the eastern seas. Article seven arranged that commissioners should be named to settle the difficulties between the English African Company and the Dutch West India Company regarding navigation on the coast of Africa.[1]

Concerning the United Provinces Great Britain had thus absolutely made her own conditions, to which the former, not being able to carry on the war alone, were compelled to submit. It was different with the other powers. The United States were recognized as an independent nation whose boundaries should be the Mississippi River on the west, Florida on the south, and the southern boundary of Canada on the north. Furthermore the Americans should have the right of fishing on the coast of Newfoundland and in the Gulf of St. Lawrence, while the coasts of the United States would not be open for fishing to English subjects. France received back her possessions in the East Indies, as well as Tabago in the West Indies and Senegal in Africa.[2] Spain regained Florida and the island of Minorca.

The United Provinces by accepting England's conditions suffered permanent and very painful losses. Ceylon and the Moluccas had, in fact, been wrenched from them by Great Britain: the possession of Negapatam, together with free navigation among the Molucca islands, enabled England to establish there a flourishing smuggling trade in spices, thus enjoying all the advantages of this commerce while in no wise contributing to the expenses of keeping up the planta-

[1] Traité de Paix entre Sa Majesté le Roi de la Grande Bretagne et Leurs Hautes Puissances les Etats Généraux des Pais-Bas.—A la Haye. Chez Isaac Scheltus, etc., 1784 (Sparks Dutch Papers).

[2] France had paid dearly for this success, since the war cost her 1250 million livres (Pfister, Die amerikanische Revolution, II, 350).

tions. The obligation of saluting the English flag was also considered very humiliating by the Dutch.[1]

The United Provinces, which had proved themselves the benefactors of the United States and France during the gigantic struggle just terminated, must then be considered the real and only victims of the American Revolution. Both abroad and at home was this true, for party dissensions in the United Provinces during the contest widened to such a degree that reconciliation became hopeless, and a revolution unavoidable. When this catastrophe a few years later really occurred, England with the aid of Prussia seized the opportunity to subdue the Republic still further, and her dependence upon her British neighbor became complete.

[1] Van der Capellen to Baron de Breteuil, September 1, 1783 (Beaufort, Brieven van der Capellen, 658).

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THE CLOSED SHOP IN AMERICAN TRADE UNIONS

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SERIES XXIX NO. 3

JOHNS HOPKINS UNIVERSITY STUDIES
IN
HISTORICAL AND POLITICAL SCIENCE
Under the Direction of the
Departments of History, Political Economy, and
Political Science

THE CLOSED SHOP IN AMERICAN TRADE UNIONS

BY

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PREFACE.

This monograph had its origin in an investigation carried on by the author while a member of the Economic Seminary of the Johns Hopkins University. The chief sources of information have been the trade-union publications contained in the Johns Hopkins Library. Documentary study, however, has been supplemented by personal interviews with trade-union officials and employers of labor and by immediate study of labor conditions.

The author wishes to express his appreciation of the helpful criticism received from Professor J. H. Hollander and Professor G. E. Barnett.

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THE CLOSED SHOP IN AMERICAN TRADE UNIONS.

INTRODUCTION.

Few industrial questions in the United States have attracted the popular interest that has been accorded the recent dispute over the closed shop. For a full decade the American public has listened attentively to a widespread discussion of what should be the proper attitude of union workers toward non-unionists. As a result of this extended debate there are no terms in labor-union terminology more familiar to the average American citizen than "closed shop" and "open shop."

Although the closed shop has been subject to much debate, little has been done to make clear the extent to which the trade unions have excluded non-unionists from employment and what methods the unions have pursued. This gap in our information is to be explained chiefly on the ground that the general public has been interested only in the broad social aspects of the question. Accordingly, much that has been said concerning the closed shop has dealt with its ethical significance, and arguments have been addressed to the public conscience concerning the justice or injustice of excluding certain classes of persons from employment. Some attention has also been given to the question of how far the closed shop is necessary as a trade-union device and what effect it tends to have upon social well-being. The employers have tried to show that the closed shop is an institution which is out of place in modern industrial life, that it cripples business, and that it creates an undesirable labor monopoly. In reply, trade unionists have insisted upon the necessity of the closed shop to the existence of many unions. They have attempted to show that the closed

shop does not lessen industrial efficiency, and they have laid much stress upon the good the closed shop confers upon labor as a whole. Finally, great interest has been manifested in the legal aspects of the subject, owing largely to the increasing number of cases involving the closed shop which have been brought before the courts.

The primary aim of the present study is to set forth the facts concerning the closed shop. It is proposed, first, to trace the manner in which the closed-shop rule developed among the early trade societies in America, and to disclose the motives which led to its incorporation into trade-union policy. Secondly, the history of the closed-shop movement will be set forth. The relative importance attached to the enforcement of the closed shop at various stages in our industrial development and the efforts which employers have made to check its operation will be shown. Next, the forms of the closed shop as they exist in various unions will be described. This analysis will make clear what the closed shop is and how far exclusion from employment is involved in its working. The manner in which the closed shop is established and the methods by which it is enforced will then engage our attention. When the closed shop has thus been described in detail, it will be possible in succeeding chapters to study its value as a trade-union device and its economic import.

At the outset, however, a statement of what we mean by the "closed shop" is imperative. When a union enforces the closed-shop rule, its members are not permitted to work with non-union men, that is, in the same "shop" with them. But trade unions differ widely in their restrictions on membership, so that of a number of unions which enforce the closed shop no two may exclude exactly the same classes of workers. Consequently, there is no one example which can serve as the type of a closed shop. Closed shops, in the sense in which the term is used herein, are shops in which is enforced the closed-shop rule as interpreted by the particular unions or groups of unions having jurisdiction. Open shops are shops where union men work or may work

side by side with non-unionists with the full knowledge and consent both of the employers and of the unions. Finally, non-union shops are shops where union men as such are not employed either because the employer will not hire them or because the unions have ordered their members not to obtain employment therein.

In the earlier days of American trade unionism it was customary to call a shop a "union shop" provided a union had control of a sufficient number of workmen to secure the observance of union working rules, even though the union could not force the exclusive employment of its members. Such, however, is not at the present time the meaning attached to the term "union shop." It now means identically the same thing as closed shop.[1] Some writers have attempted to distinguish the two terms by defining a closed shop as one where the exclusive employment of unionists is a matter of formal agreement with the employer. A union shop is said to be an establishment where a like result is accomplished without any agreement.[2] This distinction appears valueless.

A shop is not to be regarded as closed merely because all the workmen at any given time are unionists. It is closed only if the union men refuse to allow non-unionists permanently to retain employment. If non-unionists are allowed to continue at work undisturbed, it is an open shop. The so-called "preferential" closed shop[3] is really an open shop. Other terms meaning the same thing as closed shop are "fair shop,"[4] "card shop," "contract shop," and "organized shop."

[1] The agreement of the Printing Pressmen with the American Newspaper Publishers' Association has for a number of years contained the following clause: "The words 'union pressroom' as herein employed shall be construed to refer only to such pressrooms as are operated wholly by union employees, in which union rules prevail, and in which the union has been formally recognized by the employer" (Printing Pressmen, Constitution and By-Laws, 1909, p. 91).

[2] The Elevator Constructor, October, 1905, p. 13; November, 1905, p. 30.

[3] See below, p. 62 note.

[4] In some unions, however, shops are said to be "fair" if they pay union wages and observe union working rules, although non-unionists may be employed.

But while the mere fact that all employees are union men does not necessarily make a closed shop, neither does the absence of union men always indicate a non-union shop. A shop is open whenever the employer does not discriminate against unionists and when, at the same time, unions do not forbid their members to work in it. A shop is not an open shop when a union enforces the closed-shop rule therein, even if the employer has issued an order or "declaration" stating that he will hire whom he pleases. Nor is a shop open when an employer professes to treat unionists and non-unionists alike and yet in practice refuses to hire the former.

Non-union shops may be divided into three classes. First, there are "unorganized shops" in which, for reasons of policy, union men are not allowed to work by their organizations. The employer may not pay the minimum rate, or he may employ persons ineligible to union membership. Such shops are often not subject to strong union antagonism, but it is not deemed wise to allow union members to obtain employment in them as long as work can be secured in other shops, whether "closed" or "open," which are more satisfactory.

The second class of non-union shops is composed of shops against which the union is seriously embittered. If an attempted organization of the shop has failed, or if, after unionizing his shop, the employer has fallen out with the union, his shop is then declared to be a "scab," "rat," "unfair," or "foul" shop. Whoever obtains employment in it becomes a "scab," "rat," "blackleg," "snake," "bat," or "anti-unionist," according to the varied terminology of the unions.

Finally, there is the "anti-union shop,"[1] which is non-union because the employer discharges any unionist he may discover at work therein. Even if union men secretly secure work in the shop, it is not an "open shop," since they

[1] In December, 1905, the editor of the Bridgeman's Magazine complained that no term had "come into vogue for establishments which exclude unionists from employment." The term "anti-union shop" seems appropriate.

do not obtain employment as unionists. Sometimes the employer in such a shop forces his employees to sign an individual contract in which each workman agrees that while in such service he will have no connection with any labor organization.

Since 1905 there has been much objection on the part of trade unionists to the use of the term "closed shop" to indicate a shop from which non-unionists are excluded. They contend that this use of the term has been brought about by designing employers who wish to place the unions in a bad light,[1] and that union men have ill-advisedly copied the phraseology of their opponents with the result that they are now burdened with a misleading name for a misunderstood policy. The proper term, they claim, is "union shop." They assert that the union shop is "never a closed one;" it is open to all competent workmen who seek employment.[2] Some unionists also contend that there is no such thing as an open shop, all shops being either union or non-union, organized or unorganized. The fact that a shop admits union and non-union men alike to its workrooms does not "set aside that anti-union policy governing the plant which refuses to recognize a single principle of unionism and opposes all its laws. . . . The 'open shop' is closed to the spirit and letter of unionism, and for these reasons it is a non-union shop."[3]

Trade unionists contend, moreover, that the term "closed shop" has been twisted from its older significance—a shop closed to unionists. The term, they say, is "exactly proper when used to describe a shop in which for good and sufficient reasons, the union does not permit its members to

[1] "Those who are hostile to labor cunningly employ the term 'closed shop' for a union shop because of the general antipathy which is ordinarily felt toward anything closed, and with the specious plea that the so-called 'open shop' must necessarily be the opportunity for freedom" (American Federation of Labor, Report of Proceedings of the Twenty-Seventh Annual Convention, 1907, p. 25, President's Report).

[2] The American Federationist, November, 1905, p. 846.

[3] Meat Cutters and Butcher Workmen, Official Journal, June, 1906, p. 29.

accept employment."[1] A shop becomes an open shop when it is "opened" to union members.

If we examine the history of the terminology used by trade unions in connection with the closed shop, it will be found that for a considerable period these were the meanings of the words "closed" and "open" among such unions as the Iron Molders, the Iron, Steel and Tin Workers, the Cigar Makers, and the Printers. Prior to 1860 shops were generally known either as union or non-union shops. Some of the union shops were really open shops, while some of the non-union shops were known as "scab" or "rat" shops. By 1864, however, notices began to appear in the Iron Moulders' International Journal to the effect that certain shops had been "closed" pending the settlement of strikes.[2] In 1867 President Sylvis of the Iron Molders warned his men against too quickly declaring a shop a "scab" shop, and recommended that the president of the union be given authority "to open every shop . . . illegally closed."[3] Thus it will be seen that to "close" a shop amounted practically to the same thing as to "rat" or "scab" it. Once "closed," union men were not allowed to work in the shop until it was "opened" to them by their organization.[4]

Such was the terminology in general use until about 1890, but for a number of years previous to this time a change had been coming about. Thus, in 1879 the local union of cigar makers at St. Louis, Missouri, after winning a strike, notified union cigar makers through the Cigar Makers' Journal that the St. Louis union was about to make a move "in the direction of closing the shops," that is, preventing non-unionists from working with unionists.[5] In many trades it became customary instead of closing certain shops to unionists to think of union shops as closed to non-unionists. This

[1] Blacksmiths' Journal, May, 1908, p. 8.
[2] See, for example, issue of June, 1864, p. 26.
[3] Proceedings of the Eighth Annual Session, 1867, p. 10.
[4] During this period what are now called closed shops were occasionally called "good" shops. Open shops were frequently called "free" or "independent" shops. Shops controlled by the Knights of Labor were known as "K. of L. shops."
[5] Cigar Makers' Official Journal, November, 1879, p. 3.

change went naturally hand in hand with the increasing strength of the unions and their increasing insistence on the exclusion of non-unionists. It is safe to say that the present meaning of the term "closed shop" was developed independently by the trade unions themselves and has not been foisted upon them by their opponents. The latter have merely seized upon the term and have tried to make the most of it, to the disadvantage of the unions.

Similarly, the term "open shop" has undergone a change in meaning. An "open shop" was formerly one open to union men, that is, a shop in which they were allowed to work. It might be union or non-union as union men found it possible to gain substantial control or not. By 1889, or perhaps even earlier, American trade unionists had recognized that there was an essential similarity among all shops where union and non-union men worked together, and that there was a definite "open-shop method" of conducting a business. The journals of this period began to speak of "what is termed an open shop,"[1] and to mention employers who wish "to run an open shop,"[2] and in some cases to denounce "the open-shop system."[3] The open shop gradually became not a shop open to unionists but one open to non-unionists. The increasing use of the term "closed shop" to indicate a shop closed to non-unionists was important in this evolution. Quite naturally, if some shops are "closed" to non-union men, shops where unionists and non-unionists are employed are called "open."

From 1890 until the present time the older terminology has gradually been superseded by the new. The latter is now firmly intrenched, and if correctly understood does not seem objectionable.[4] The unions properly point out that a union which enforces the closed shop is not necessarily a closed union, that is, one which does not freely admit competent workmen. There is of course no logical connection

[1] Iron Molders' Journal, September 30, 1889, p. 6.
[2] Iron Molders, Proceedings of the Nineteenth Session, 1890, p. 28.
[3] Cigar Makers' Official Journal, October, 1890, p. 4.
[4] The term "union shop" still widely prevails in the same sense as closed shop.

between the two. If this distinction is kept in mind, it is proper to say that where trade unionists will not work with non-unionists the shop is closed.[1]

Finally, it may be noted that the words "closed" and "open" are frequently used in connection with various equivalents for "shop." Thus, for instance, certain unions speak of closed or open offices, jobs, factories, mills, yards, harbors, or mines. Every union which discriminates against non-union men, however, employs as general terms such phrases as "closed-shop rule," "open-shop system," or "non-union shop plan."[2]

[1] Eleventh Special Report of the Commissioner of Labor, 1904, p. 24.

[2] Among the British trade unions the open shop is termed "working mixed." French terms for the union or closed shop and the open shop are "boutique d'union" and "boutique ouverte." Corresponding German terms are "union Werkstatt" and "offene Werkstatt."

CHAPTER I.

The Development of the Closed-Shop Rule.

Contrary to general opinion, the closed shop is not an institution of American origin nor is it of recent incorporation into trade-union policy. How far back its history goes it is impossible to say, but exclusion from employment is such an obvious weapon of industrial warfare that it is hard to believe that in some form or other it has not been used since the inception of trade unions.

Whatever may be the case in other countries, so far as England is concerned, the closed shop is "coeval with Trade Unionism itself."[1] Moreover, there is trustworthy evidence that even before trade unions proper came into existence the English gilds and trade clubs of handicraftsmen discriminated against non-members. Thus Sidney and Beatrice Webb assert that the eighteenth century trade clubs of handicraftsmen "would have scouted the idea of allowing any man to work at their trade who was not a member of the club."[2] Brentano mentions the fact that some of the gild-statutes of the sixteenth and seventeenth centuries provided that "no journeyman was to work with a non-member;"[3] in other gild-statutes appeared the rule that "as long as members of the gild were out of work, no member was to work with non-members."[4]

In the early years of English trade unionism many of the unions were bitterly opposed to working with "unlawful persons," that is, persons who had entered a trade in violation of the Act of 5 Elizabeth, c. 4, which regulated the system of apprenticeship. Not only were such workmen

[1] Webb, Industrial Democracy, p. 214.
[2] Ibid. See also Webb, History of Trade Unionism, pp. 31, 46.
[3] Brentano, On the History and Development of Gilds and the Origin of Trade Unions, pp. 96–97.
[4] Ibid., pp. 67–68.

attacked by legal methods,[1] but strikes were also called against them.[2] Jevons notes a pamphlet, "A practical and eligible plan to secure the rights and privileges of mechanics," published in 1776, which outlines a scheme for enabling workmen to "make use of every lawful means to prevent those from exercising the calling who were not authorized by law, whether as journeymen or masters."[3] Jevons says that "societies appear actually to have been formed on the basis sketched out."

Probably coincident with this movement seems to have been the adoption of regulations by many of the English trade societies requiring all persons engaged in the trade to observe "society rules" if they wished to work with society members. Thus the "Practical and eligible plan" of 1776 suggested a "grand" or central committee with power to use "every legal mode" to prevent persons from working contrary to the articles and resolutions of the organization.[4] In a parliamentary report of 1806 reference was made to the fact that there had been in existence for some time an "institution or society among the woolen manufacturers, consisting chiefly of clothworkers," who so conducted their organization that there was every reason to believe "that no clothworker would be suffered to carry on his trade, otherwise than in solitude, who should refuse to submit to the obligations and rules of the society."[5]

As also indicating the early origin of the "principle of exclusion," as they term it, the historians of English trade unionism point out that "at the present day it is especially in the old-fashioned and long-established unions that we find the most rigid enforcement of membership."[6] While the newer organizations incline to exclude non-members from employment, it is among the firmly established unions, with

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[1] Webb, History of Trade Unionism, p. 53.
[2] Brentano, pp. 108, 112.
[3] Jevons, The State in Relation to Labor, pp. 101–102.
[4] Ibid., p. 102.
[5] Report of the Committee on the Woolen Manufactures, quoted by Webb, History of Trade Unionism, p. 34.
[6] Webb, Industrial Democracy, p. 215.

a long history, that the exclusion of such persons has become almost mechanical.

It is probable that, through emigration to America and constant communication between the two countries, journeymen on this side of the Atlantic became familiar with the policy of excluding certain persons from employment. It was impossible for the early American trade societies to insist in any thoroughgoing fashion upon the immediate enforcement of the closed shop. Only a small part of the craftsmen in any trade were society members, and there was little intercourse or cooperation between isolated local organizations. Once well under way, however, trade unions rapidly developed, and their increase in strength was accompanied almost always with an increasing insistence upon the exclusion of non-unionists.

Owing to lack of data, in many cases it is impossible to state with exactness the attitude of the early trade societies toward the employment of non-unionists. An exception exists in the case of the printers' or typographical societies which thrived from 1802 onward, since a considerable part of their minutes is accessible.[1]

The methods used by the early typographical societies to enforce their trade regulations were from the nature of the case experimental. The chief concern of the societies was the maintenance of a wage scale. It was believed that this purpose could be accomplished if each member was forbidden to work for less than the established rate, but printing offices were allowed to employ non-members, who might or might not obey the rules. This plan was soon found to be defective, since non-members frequently cut the rate. As early as May 16, 1807, the Philadelphia Typographical Society appointed a committee to consider the matter. The committee in its report proposed that a conference be held with the master printers, and that such changes in prices

[1] Barnett, "The Printers: A Study in American Trade Unionism," in American Economic Association Quarterly, October, 1909. Acknowledgment is here made of the very substantial assistance furnished by this monograph. The sources, however, have been examined independently.

be made "as the nature of the times may require and enable employers in all cases to give the preference, and, if possible, never to employ any others than members of this institution, or at least none but men who have served a regular apprenticeship."[1] The suggestion was rejected by the board of directors as at variance with the established policy of the society. They also rejected a proposal to bar from future membership all persons who were at the time working below the price. The New York Typographical Society in 1810 was likewise informed by a committee that the rate was being cut in certain offices, but no action of importance was taken on the report.[2] It was also found in the enforcement of the apprenticeship requirements, the only other trade regulation made by these societies, that while society members obeyed the rule and did not work at press with any person who was not "regularly bred," non-members in the same office could and did teach the trade to such persons.

In view of these facts it became necessary, if the societies were to enforce their trade rules, to devise some other method of dealing with the situation. The immediate development was in the direction of requiring the employer, under penalty of being deprived of that part of the labor supply controlled by the society, "to recognize the society rules as binding upon him as an employer."[3] First to act was the New York society. On July 22, 1809, it adopted a by-law providing that no member of the society should "engage or continue when there is a journeyman working for less than the established prices." The rule was enforced to some extent, but there was considerable reluctance on the part of many members to give up their positions in accordance with the requirement. On November 18, 1809, the by-law was suspended, and it was finally repealed on June 16, 1810.[4] An attempt to revive it on August 17, 1811, was defeated.

For a number of years following 1816, records of the proceedings of the printers' societies are not extant. Later on,

[1] Barnett, p. 280.
[2] Ibid., p. 281.
[3] Ibid., p. 282.
[4] Ibid., pp. 282–283.

when data are again available, it can easily be seen that the plan of the New York society had been readopted. This is indicated by the following typical rule in the constitution of the Baltimore Typographical Society in 1832: "No member under forfeit of membership shall work in any office where a boy, not an original apprentice of that office, is employed for less than the list of prices demands unless the boy so employed is under seventeen years of age or shall have come from an office the proprietor of which shall have deceased or declined business; nor shall any member, under the same forfeiture, work in an office where any person or persons are employed for less than the list of prices calls for."[1] The employer was thus required to observe the two fundamental rules of the society or he could not secure the services of society members. The rule that members should work only in offices where the trade rules of the society were observed excluded from employment with unionists only those persons who could not obtain the society rate. The emergence of a wider policy of exclusion was due to a different but contemporaneous line of development.

To secure the enforcement of wage scales and apprentice rules, it was, of course, necessary for the societies to inflict some penalty upon members who saw fit to disobey their regulations. This was ordinarily accomplished by expelling the offenders from membership, whereupon they became known to the trade as "rats," and were shunned by all good unionists. It is clear that long before the printers' societies refused to work with ordinary non-union men there was an intense feeling against working with "rats," with the result that strikes were called in shops where they were employed.[2]

Not only did the societies object to working with those who had "ratted" in their own locality, but they also felt that members of one society should refuse to work with

[1] Baltimore Typographical Society, Constitution, 1832, Art. XI.

[2] Such, for example, was the often mentioned strike in Albany in 1821, referred to by Thurlow Weed in his Autobiography, p. 86. See also Barnett, p. 288; Wright, The Industrial Evolution of the United States, pp. 233–234; Ely, The Labor Movement in America, p. 39.

journeymen who had "ratted" in other cities where societies existed. Thus, on September 9, 1809, the New York society drafted a letter to be sent to neighboring cities, urging that there be an interchange of information concerning the movement of "rats" from one place to another.[1] In 1816 the Albany Typographical Society reported to New York the names of several printers who had worked for less than the bill of prices after having been "several times warned of the consequences which would result from their proceedings."[2] When one of these "rats" came to New York, however, the typographical society of that place, after some hesitation, voted that its members who were working with him "be at liberty to retain their situations." The aversion to working with a "rat" gradually grew stronger as the independent societies were gathered into a general organization.

Thus far we have seen that during the first stage in the development of the closed shop the organized printers forbade their members to work in shops which did not observe the two cardinal trade regulations, and also in shops where "unfair" workmen were employed. But the closed shop of the present day means more than this, for it excludes not only those who cannot earn the minimum rate and "unfair" men, but all non-union men. That the policy of excluding all non-unionists was under consideration at a very early time we have already indicated.[3] Almost from the outset there appeared in the rules of the societies the requirement that employment should be secured for society members in preference to non-members. In Philadelphia the officers were pledged to this at their installation. According to a rule passed by the board of directors of the society on February 21, 1807, a member who secured work for a non-society man in preference to a fellow-member was liable to be expelled.[4] Similar provisions were made by

[1] MS. Minutes, New York Typographical Society, September 9, 1809.
[2] Ibid., October 12, 1816.
[3] See above, pp. 19–20.
[4] Barnett, p. 284.

other societies; but although members were occasionally arraigned on the charge of having violated the rule, on the whole it was "but loosely observed."[1]

By about 1840 the closed-shop rule had been fully developed, and the printers' associations and societies in existence at this time explicitly provided against the employment of non-members in the same offices with society members. The rules of the New York Typographical Association in 1833 required all members "to inform strangers who come into the office where they are employed, of the established wages, and also of the existence of the association and of the necessity of becoming members."[2] In the constitution of the reorganized Baltimore society of 1842 the following rule appeared: "Every person working at the business will be required to make application to join this society, within one month from the time of his commencing work at any office in the city. . . . On the refusal or neglect of any to comply with the regulations contained in the foregoing sections or in case of the rejection of the applicant . . . *the members of this society shall cease to work in any office where such person may be employed.*"[3]

Unfortunately, the steps in the development of the closed-shop rule among other trades cannot be traced as satisfactorily as among the Printers, since very few of the early constitutions and minutes are extant. In five or six trades, however, facts can be found here and there which seem to indicate a parallelism with the experience of the printers' societies.

Next in interest and importance to the Printers are the Cordwainers, who were organized in Philadelphia as early

[1] On November 1, 1817, the New York society expelled a member on a charge of six counts, one of which was that he had refused "to give employment to a member of this society; and employing one not a member in preference, . . . a distinct violation of the solemn pledge he has repeatedly given us." Whether conviction on this count alone would have caused his expulsion appears doubtful.

[2] Barnett, p. 285.

[3] Baltimore Typographical Society, Constitution, 1842, Art. VI, Secs. 1, 3.

as 1794.[1] Societies were also established at a very early time in Baltimore, New York, Pittsburgh, and other centers of the boot and shoe trade. Indictments were brought against members of several of the societies for "a combination and conspiracy to raise their wages."[2] From the reports of these trials it is possible to ascertain the methods which the societies adopted to enforce their trade regulations and, to some extent, to trace the stages in the development of these methods.

At the very first meeting of the Pittsburgh society, organized about 1809, the members "swore not to work for any employer who would not give the wages."[3] Journeymen who went to work in struck shops or worked under the scale were "scabbed," and society members were not allowed to work with them. Very shortly thereafter the society refused to allow its members to work with non-union journeymen. In the Philadelphia society, which was the first to be organized, it was a rule from the beginning, apparently, that no journeyman, be he member or non-member, should be allowed to work for an employer at less than the established prices.[4] Against those who violated this regulation the "scab law" was applied with great vigor. "Turn-outs" against "scabs" were frequent. It was not long, however, before all non-members were excluded from employment.

In the constitution of the Journeymen Cordwainers of the City of New York, printed in 1805, it was provided that "no member of this society shall work for an employer, that has any Journeyman Cordwainer, or his apprentice in his employment, that do not belong to this Society, unless the jour-

[1] Documentary History of American Industrial Society, Vol. III, edited by Commons and Gilmore, p. 27.

[2] The trials were held in Philadelphia, 1806; in New York and Baltimore, 1809; in Pittsburgh, 1815; in Chambersburg, Pennsylvania, 1829; in Geneva, New York, 1835; in Hudson, New York, 1836.

[3] Report of the Trial of the Journeymen Cordwainers, of the Borough of Pittsburgh. Taken by Charles Shaler, Esq. Reprinted in Commons and Gilmore, Vol. IV, p. 26.

[4] The Trial of the Boot and Shoemakers of Philadelphia. Taken by Thomas Lloyd. Reprinted in Commons and Gilmore, Vol. III, p. 74.

neyman come and join the same."[1] If the non-member failed to join the society within a specified time, a fine was imposed upon him which had to be paid before he could be admitted to membership.[2] A similar rule applied to apprentices who had become "free."[3] While some witnesses at the trial declared that they had never heard of a "turn-out" being called merely because non-members were employed in a shop, the bulk of evidence indicates that such strikes or "turn-outs" actually occurred. This society was probably the first labor organization in America to adopt a constitution openly asserting the principle of exclusion and applying it to all non-members.

But while the cordwainers' societies which came latest under judicial notice, such as the Journeymen Cordwainers of the Borough of Pittsburgh, exhibit comparatively slight development over the early Philadelphia society in their closed-shop policy, at least one innovation is to be noted. The Pittsburgh society in June, 1815, "brought forward a resolution to write to the societies in Baltimore and Philadelphia and to agree with them not to receive any members of their societies, unless they produced certificates of belonging to their societies, and then if he came to the place without one, they would not work with him."[4] One employer testified that he had been asked to discharge a journeyman who had "scabbed" in Baltimore, but on his refusal to comply with the request the Pittsburgh cordwainers "did not scab the shop."[5]

The tailors were also organized at an early date. From the report of the trial of the Buffalo tailors for conspiracy in 1824 it is evident that permission to employ society members was contingent upon the payment by an employer of a minimum wage to all tailors, union and non-union alike,

[1] Trial of the Journeymen Cordwainers of the City of New York. Reported by William Sampson. Reprinted in Commons and Gilmore, Vol. III, p. 366.
[2] Ibid., p. 367 (Art. XI).
[3] Ibid., (Art. XII).
[4] Ibid., Vol. IV, p. 31.
[5] Ibid., p. 51.

and upon the non-employment of "unfair" journeymen. This is made clear by a statement in a local paper of the period that "a singular custom among the Jours. [that is, journeymen] to coerce the refractory was proved to exist throughout the United States, by which the person who refused to come into the measures of the majority or who subsequently to a turn out should, before an arrangement was had, labor at the same place for less than the wages demanded, was stigmatized by an appropriate name, and rendered too infamous to be allowed to labor in any shop where his conduct was known."[1] In other words, a "scab" was not allowed to work with society members.

From the report of the trial of the "Twenty Journeymen Tailors" of New York in 1836 it appears that members of the New York society of tailors had approached journeymen who were working at "shops under the prohibition," that is, struck or "unfair" shops, and had asked them "to abstain from working and join the Society." They were warned that if they refused to comply with the society's wishes they would be proscribed "in such a manner, that they could not get employment in regular shops, here or anywhere else, where there were unions." They were told that members of the unions would "refuse even to work with them, or to work in any shop where they should be employed; and literally to hunt them from all tailors' society."[2] If this testimony is trustworthy, it seems evident that persons who had "scabbed" in one locality were ostracized in every community where the tailors were organized. Nothing was said in the course of the trial about the refusal of society members to work with non-members who were not "scabs." It is probable that a rule of this sort had not yet been adopted.

In a Philadelphia case, however, in 1827 it appears that non-union tailors were barred from employment. All the witnesses at the trial of the journeymen tailors in that year

[1] The Buffalo Emporium, December 25, 1824; the article is reprinted in Commons and Gilmore, Vol. IV, p. 94.

[2] The New York Courier and Enquirer, May 31, 1836; the article is reprinted in Commons and Gilmore, Vol. IV, p. 316.

agreed that society members would not "sit alongside" a "scab." This seems to have been the fixed policy of the Philadelphia society. One witness stated that the society compelled journeymen to join it after they had "worked in a shop ten or twelve days." If they did not join, "each one in the shop would be liable to a fine."[1] Other witnesses declared that this was not the case. It is probable that each shop had "its own rules."[2] In some shops all journeymen were required to join the society, while in others non-members were tolerated.

The cigar makers appear to have effected their earliest organization in Baltimore in 1851. For the first four and one half years of the Baltimore union's existence no records of its proceedings are available. From the earliest minutes extant it appears that in February, 1856, the society required its members not to work for less than the established wage rate, but did not discriminate against non-unionists who worked for less. As a result of an attempt to decrease wages, the union on February 28, 1856, voted that no member should accept work in certain shops. This did not end the difficulty, as non-unionists continued to work in some of the shops below the scale. This led the union to notify wage-cutting non-members that they should cease work on penalty of having "the hands of the association refuse to work with them in the association shops."[3]

The rule that non-union men should not work at less than union wages did not give the union control over the situation, and on March 17, 1856, the association voted that no member of the organization should thereafter "work with any man unless he is a member of the association or gives his

[1] Trial of Twenty-four Journeymen Tailors, charged with a Conspiracy: Before the Mayor's Court of the City of Philadelphia, September Sessions 1827. Reported by Marcus T. Gould. Reprinted in Commons and Gilmore, Vol. IV, p. 141.

[2] Ibid., p. 133.

[3] MS. Proceedings of the Cigar Makers' Society of the State of Maryland, 1856–1863. It was on March 14, 1856, that this notice was given to the workmen of a Mr. Cromer. It had the effect of bringing all but two of his men into the union, though all that was contemplated at the time was to make them leave their work.

consent to be a member at the first meeting night." On August 4, 1856, unanimous consent was given to call a strike in a shop against a Mr. Lohman, "he refusing to join the association." On no occasion thereafter does the rule seem to have been suspended.[1]

In 1854 the cigar makers' unions of New York State, according to McNeil,[2] refused to work with "rats" or "scabs," especially in what were termed "fair" shops. Whether there had developed an intercity proscription of scabs is not clear from McNeil's statement. In September, 1856, however, the Baltimore Cigar Makers sent to the Philadelphia and New York unions the names of a number of journeymen who had refused to obey a strike order. While the purpose in forwarding this list is not expressed, it could only have been to notify these unions that those named were not to be allowed to work in organized shops. In December, 1860, the Maryland association, after considerable debate, decided to notify all other societies in the trade that after January 1, 1861, its members would not work with any stranger coming from a place where a cigar makers' organization existed unless he could produce a certificate of membership therein.

The Hollow Ware Glassblowers' Union of the United States held the second annual meeting of its Grand Union in 1858. At that time a resolution was adopted which at least suggests that a closed-shop policy was developing. It provided that union members were not to work "in any factory with any journeyman who is working for a less rate of wages than the list of prices." Furthermore, union members were not to work "in any factory with any one who has a molder or finisher, or an assistant, in making bottles or vials, or for any other purpose than gathering glass, except such assistant be a regular journeyman or apprentice to the business."[3]

[1] On June 2, 1856, all of Mr. Cromer's non-union hands were notified to "join the association forthwith."

[2] McNeil, The Labor Movement: The Problem of Today, pp. 585–586.

[3] "History of the Glass Bottle Blowers' Association," 1901.

In the constitution of the Benevolent and Protective Association of United Operative Mule Spinners of New England for 1858 it was provided that all members of the organization were to "intercede for employment for any of its members out of employ in preference to all other Spinners."[1] It is probable that from this rule developed the policy of excluding non-unionists from employment. A number of unions, for example the Potters,[2] the Longshoremen,[3] and the Iron, Steel and Tin Workers,[4] retain "preferential" clauses in their constitutions, survivals in all probability of the original attitude toward non-unionists. None of these unions, at present, are willing to work with non-unionists.

The early history of the Iron Molders also shows an interesting development of the closed-shop rule. In the constitution of the Iron Stove and Hollow Ware Moulders of Philadelphia for 1855 emphasis was laid upon the provision that no member should work for less than the standard rate in a shop "represented in the union by an executive committee," except by the consent of such committee. Members were not allowed to work in a "represented" foundry where any journeyman, "whether a member of this association or not," accepted less than the minimum rate.[5] The association, however, made no attempt to compel members or nonmembers to observe the wage scale in foundries "not represented in the union." Members working in such establishments were granted cards exempting them "from the payment of dues and the laws in regard to prices and all other regulations of the union that may not be applicable in such a case." Upon returning to work in an organized shop the surrender of the cards and the privileges consequent upon them was required.[6]

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[1] General By-Laws, Sec. 6.
[2] Constitution, 1910, Rules and regulations of local unions, Sec. 226.
[3] Constitution, 1909, Rules for Locals, Sec. 17.
[4] Constitution, 1909, Art. XVII, Sec. 11. This section was originally adopted in 1876.
[5] Article VI, Sec. 1.
[6] Article II, Sec. 4.

It appears from these rules that the Molders differed from the societies of cigar makers, printers, and cordwainers in that they did not require their members to observe the union scale in all shops.[1] Neither did the Molders during the early period in the history of their national union forbid the employment of members in "scab shops." A resolution to that effect was "indefinitely postponed" by the convention of 1866,[2] but the local unions for the most part did not allow members to work in such shops. In 1867 an attempt to secure the adoption of an International closed-shop rule was defeated,[3] and instead the convention indorsed a resolution declaring that it was "bad policy for union men to quit work on account of non-union men working in the same shops," and that "union men do all in their power to get non-union men in said shops to join the union." But three years later the union at its annual session voted down a resolution "that it should not be considered to the interest of the International Union for men to cease work in a shop where one man refuses to conform to union principles."[4] This change in attitude was probably owing largely to the rapid increase in the strength of the union from 1867 to 1870.

From the foregoing survey it appears that the same stages in the development of the closed-shop rule have been repeated in union after union. There are a few American trade unions even today that are no further advanced

[1] Owing to industrial depression, the union was compelled as late as 1877 to sanction the employment of its members in unorganized foundries at the same wages as non-union men (Iron Molders' Journal, June, 1877, p. 361).

[2] Proceedings of the Seventh Annual Session, 1866, p. 28.

[3] Proceedings of the Eighth Annual Session, 1867, p. 53.

[4] Proceedings of the Tenth Annual Session, 1870, p. 26. It is interesting to note in this connection that at the convention of the Bricklayers and Masons in 1869 a committee recommended that "the question of allowing union bricklayers to work for bosses employing five non-union bricklayers be left with the local unions." The recommendation was defeated. In both this case and that of the Molders just mentioned, if the proposals had been adopted a compromise would have been effected. Non-unionists would not have been entirely excluded from employment with union men, but the number allowed in "organized" shops would have been severely limited.

toward a closed-shop rule than were the Printers of New York or Philadelphia in the first years of their organization. The two associations of Post Office Clerks, the Stationary Engineers, and the Letter Carriers do not require non-members to conform to any of the regulations adopted for the control of members. The objects of these unions are to secure legislation and to provide a system of benefits. They do not bargain collectively with their employers. The Steel Plate Transferers have no wage scale, sign no agreements, and allow individual bargaining, but there is an unwritten rule that union members shall secure employment for each other in preference to non-members.

A second class of unions have no objection to their members' working with non-members, but insist that the latter shall observe the union trade regulations. No member is allowed to obtain employment in a shop where a strike is in progress, but there is no organized resistance if the employer retains "scabs" or strike-breakers in his employment after a strike has been settled. In reality, the "scab" under such circumstances is ostracized, with the result that sooner or later he usually leaves his job. The unions which take this position with reference to the closed shop are the four railroad brotherhoods, namely, the Engineers,[1] the Firemen, the Conductors, and the Trainmen, together with the Switchmen, the Car Workers, the Maintenance-of-Way Employees, the Masters, Mates and Pilots, and the Railroad Telegraphers. All of these organizations, as will be noted, are connected with the work of transportation.

The great majority of American labor unions fall in the third class and accept the principle of the closed-shop rule. Whether they insist upon its enforcement or not depends largely upon expediency. It often happens that a union which would like to enforce the closed shop is compelled to tolerate non-unionists. The Commercial Telegraphers and the Textile Workers,[2] for instance, allow their members to

[1] When first organized in 1863, it seems that the Engineers demanded a closed shop. See below, p. 37.

[2] In a few cases local unions of the Textile Workers have struck against the employment of non-unionists, but their action has not had the sanction of the national "emergency board."

work in open shops because they are not strong enough to do otherwise. In every closed-shop union there are times when it is inexpedient to attempt the exclusion of non-unionists. There are thus a few open shops in the jurisdiction of almost every closed-shop union. It is customary for the unions to insist that members employed in these shops shall receive union wages.[1] In many cases the unions also require that non-union men shall be employed under union conditions before union men can go into the shops.

[1] Glass Bottle Blowers, Proceedings of the Thirtieth Annual Session, 1906, p. 254.

CHAPTER II.

The History of the Closed-Shop Movement.

In the preceding chapter it has been shown that the Printers, Cordwainers, and Tailors had developed the closed shop fully by about 1835. A similar movement had begun among the Hatters. In 1822 three workmen of that trade in New York City refused to work with journeymen who were not members of a local hatters' society.[1] Whether the closed shop had been adopted prior to 1835 by societies in any trades other than the four mentioned cannot be ascertained from existing data. It seems likely that the shipwrights, house carpenters, and other organized workmen followed the same policy. An interesting piece of evidence in this direction is found in a complaint made by the master house carpenters of Philadelphia against the "Trades' Union" of that city in 1836. The Trades' Union was a central labor organization, with which the society of journeymen carpenters was affiliated. The Trades' Union, said the masters, encouraged strikes. But, they declared, "the evil does not rest here, [because] in order to ensure the growth and continuance of the combination, it is arrogantly required, that no master workman shall employ any Journeyman who is not a member of the Trades' Union."[2] The language of the protest may be construed to mean that every organization affiliated with the Trades' Union enforced the closed shop or even that members of one union refused to work with non-unionists of another trade, but it is more probable that the masters referred only to the policy of the Carpenters. In the same year two journeymen plasterers were brought before the recorder's court of Philadelphia charged with con-

[1] The People v. Trequier, 1 Wheeler's Criminal Cases, p. 142.

[2] The Pennsylvanian, March 17, 1836, p. 2. Article reprinted in Documentary History of American Industrial Society, Vol. VI, edited by Commons and Sumner, p. 51.

spiracy because of their refusal to work for an employer who would not discharge another journeyman "not a member of the Trades' Union."[1]

In 1846 the Carpet Weavers probably enforced the closed-shop rule, since their constitution provided that when an operative went from one factory to another he must secure a certificate "to present to the President or Committee of the Factory he goes to."[2] In 1854 the cigar makers' unions of New York State, as has been mentioned, refused to work with "scabs," while in 1856 the Baltimore society took the same attitude toward all non-union men.[3] In 1855 the Iron Molders[4] and in 1858 the Hollow Ware Glass Blowers[5] and the Mule Spinners had begun to develop the closed-shop rule.[6] The Glass Blowers were probably the first national union to adopt a rule as to what persons its members might work with. In 1857 and 1858 many local unions of the Stone Cutters reported that they had refused to work with journeymen who would not become members.[7]

If the available evidence is summed up, it may be said that practically every trade union formed prior to the Civil War was in favor of excluding non-members from employment. Often, of course, they were not able to carry this policy into practice. Moreover, the numerous prosecutions for conspiracy brought against the trade societies from 1806 to 1842 undoubtedly acted as a deterrent on the development of a rigid closed-shop policy. In practically all of these trials of which the reports have been preserved it was the exclusion from employment on which greatest stress was laid by the prosecuting officers. Except in the cases of the Hudson Shoemakers (1836) and the Philadelphia Plasterers

[1] National Laborer, July 16, 1836. Article reprinted in Commons and Gilmore, Vol. IV, pp. 338–341.

[2] Weekly Tribune, September 12, 1846. Article reprinted in Documentary History of American Industrial Society, Vol. VIII, edited by Commons, pp. 240–242.

[3] See above, pp. 27–28.

[4] See above, pp. 29–30.

[5] See above, p. 28.

[6] See above, p. 29.

[7] Stone Cutters' Circular, September, 1857, p. 1; June, 1858, p. 5.

(1836), the juries returned verdicts of guilty. Light fines were ordinarily imposed upon the defendants, but in the case of the New York Tailors (1836) the court, in spite of a recommendation for clemency, fined the president of the society a hundred and fifty dollars, one member, "who made himself particularly conspicuous," a hundred dollars, and the remainder fifty dollars each. The leniency of the courts was owing in part to the belief that the defendants had "erred from a mistake of the law," as Mayor DeWitt Clinton said in passing sentence upon the New York Cordwainers. Another reason doubtless was that the combinations had not as yet attained such power as to incite fear.

All of the conspiracy cases aroused much interest and excitement at the time. After the trial of the Baltimore Cordwainers, for instance, the fear was expressed in some of the local newspapers "that the verdict would prove a death blow to every organized society."[1] While this was not the case, it is evident that the cordwainers' societies against whose members convictions were secured were less active in discriminating against non-members for a considerable period after their respective trials. Mayor Clinton warned the New York society members in 1809 "so to alter and modify their rules and their conduct, as not to incur in the future the penalties of the law."[2] That this was done may be inferred from a remark of the prosecuting attorney in the Philadelphia Tailors' case (1827), who said that the exclusive employment of society members had been required by the Cordwainers in New York "until the firmness and independence of a Court and Jury put an end to it there."[3] Indeed it is "barely possible that the difficulty of carrying out strikes or other strategic industrial measures without conflict with the common law principle of criminal conspiracy may have been one of the causes which . . . induced trade societies in various parts of the country to aban-

[1] Glocker, "Trade Unionism in Baltimore before the War of 1812," in Johns Hopkins University Circular, April, 1907, p. 28.
[2] Commons and Gilmore, Vol. III, p. 385.
[3] Ibid., Vol. IV, pp. 177–178.

don their industrial aims, or, at least, to conceal them under benevolent activities."[1] Those who were opposed to labor combinations felt assured, at any rate, that they had put "an end to those associations" which had been "so prejudicial to successful enterprise of the capitalists . . . and so subversive to the best interests" of the country.[2]

With the great spread of trade unionism in the thirties the societies again began, as has been noted, to enforce the closed shop. The decision of Chief Justice Savage of the supreme court of judicature of the State of New York in the Geneva Shoemakers' case[3] in 1835 was a severe blow to this development. The outcome of the Hudson Shoemakers' case the year following was hailed by the unionists as "rescuing the rights of the Mechanics from the grasp of Tyranny and Oppression."[4] A note of elation over the victory for the closed shop in the Philadelphia Plasterers' case in 1836 was also sounded in the National Laborer.[5] From this time onward verdicts and decisions adverse to the right of society members to discriminate against non-members caused the unions much less apprehension than before.

From 1860 to 1870 the union which pursued the closed-shop policy with the greatest energy was the Molders. During this period notices constantly appeared in their journal, warning workmen that they must carry union cards in order to obtain employment in certain localities.[6] The activity of the union in enforcing this rule called forth a protest from employers in 1863, when the Iron Founders and Machine Builders' Association of the Falls of the Ohio in an address to the trade declared that discrimination

[1] Glocker, p. 28.

[2] Preface to the Report of the Trial of the Journeymen Cordwainers of the Borough of Pittsburgh. Commons and Gilmore, Vol. IV, pp. 16–17.

[3] People v. Fisher, 14 Wendell (N. Y.), 9.

[4] From the title page of the report of the trial of the Hudson Shoemakers. Commons and Gilmore, Vol. IV, p. 277.

[5] July 16, 1836. Article reprinted in Commons and Gilmore, Vol. IV, p. 338.

[6] Iron Molders' Journal, July, 1864, p. 44; August, 1864, p. 38.

against non-unionists meant "arbitrary interference with the business management" of employers.[1]

In 1864 the Ship Owners and Ship Builders' Association of Buffalo in a circular to vessel owners asked them to discriminate against members of the Ship Carpenters and Caulkers' Union, which had become so "obnoxious, . . . dictatorial, . . . ruinous and monstrously exhorbitant" in its demands as to assert that "this man or that, shall not be employed unless he first becomes a member of their union."[2] Even more interesting are the resolutions adopted by the board of directors of the Galena and Chicago Union Railroad Company in the same year. The text of the resolutions leads one to infer that the "Brotherhood of the Footboard," now known as the Brotherhood of Locomotive Engineers, demanded the right to "dictate" to the railroad company "whom they shall or shall not employ."[3] When in July, 1864, an attempt was made to organize a general association of employers to combat the "dangerous attitude" of labor, the appeal for a convention set forth that the unions assumed "to dictate to employers . . . who shall be discharged and who retained; when, and on what terms our establishments and business may be operated."[4]

From the late sixties on, the closed shop assumed increasing importance among union policies. Industrial development was proceeding on a tremendous scale, while every year the stream of immigration increased. Scattered local

[1] Fincher's Trades Review, October 3, 1863. Article reprinted in Documentary History of American Industrial Society, Vol. IX, edited by Commons and Andrews, pp. 89–97.

[2] Ibid., April 2, 1864. Article reprinted in Commons and Andrews, Vol. IX, pp. 104–105.

[3] Ibid., June 4, 1864. Article reprinted in Commons and Andrews, Vol. IX, p. 107. The Brotherhood of the Footboard was organized on August 17, 1863. Its demand for the closed shop at this period in its history may, perhaps be explained by the fact that as first constituted it included foremen and machinists as well as engineers. On February 23, 1864, however, it limited its membership to locomotive engineers (Kennedy, "Beneficiary Features of American Trade Unions," in Johns Hopkins University Studies in Historical and Political Science, Ser. XXVI, Nos. 11–12, pp. 19–20).

[4] Ibid., August 13, 1864. Article reprinted in Commons and Andrews, Vol. IX, p. 109.

unions were rapidly formed into national organizations. All the conditions were favorable to the development of a policy of exclusion.

From 1868 to 1873 the Knights of Saint Crispin, an organization of journeymen shoemakers, carried on eight strikes against the employment of non-union men. All but one of these ended in failure.[1] Other organizations, such as the Coopers, Granite Cutters, Sons of Vulcan, and the Iron and Steel Roll Hands made vigorous demands for the closed shop from 1870 to 1880, and in some cases[2] inserted rules in their national constitutions forbidding members to work with or aid non-members. Unions like the Iron Molders, Cigar Makers, Hatters, and Typographical Union enforced the closed shop with increasing strictness. In 1873 the editor of the Iron Molders' Journal declared that from what he had heard and seen it was a "risky business to travel without a card."[3] The unions of the building trades, notably the Bricklayers and Masons and the Carpenters, were also strongly in favor of the closed shop, and soon reached a preeminence in its enforcement which they have retained until the present day.

Two important advances in closed-shop policy were also well under way by 1875. In the first place, arrangements were effected between different unions of allied trades under which "scabs" and other non-unionists were discriminated against jointly by such unions. Secondly, the initial impulse had been given to a movement to make an employer's entire business and not a single shop the "unit" of the closed "shop." Material made by non-unionists was also discriminated against. The development of these forms of discrimination will be treated in the respective chapters

[1] Third Annual Report of the Commissioner of Labor, 1887, pp. 1052–1055.

[2] Sons of Vulcan, Constitution, 1874, Subordinate Forge, Art. XI, Sec. 3. Iron and Steel Roll Hands, Constitution, 1874, Constitution of Subordinate Lodges, Art. XII, Sec. 3. In 1876, on the amalgamation of these two unions into the Amalgamated Association of Iron, Steel and Tin Workers, the closed shop was provided for in the latter's constitution for subordinate lodges, Art. XV, Secs. 1, 2.

[3] Iron Molders' Journal, August, 1873, p. 69.

devoted to them, under the captions "Joint Closed Shop" and "Extended Closed Shop."

An influence which made strongly for the increasing popularity of the closed shop from 1880 on was the trade-union label. The first label was adopted by the Cigar Makers' Association of the Pacific Coast in 1875,[1] and in 1880 a national organization, the Cigar Makers' International Union, adopted this device.[2] Within the next ten years the Knights of Labor and nine national unions followed this example.[3] From that time forward labels came into use among the unions with increasing rapidity. The label was issued only to shops which employed union members exclusively.[4] The number of closed shops in many unions was soon materially increased by the demand for label goods. Still more important, however, was the influence of the label upon unions which had heretofore been indifferent concerning the closed shop. By the propaganda for the sale of label goods attention was called to the fact that the label stood for the closed shop as opposed to open-shop and non-union conditions. The effect of advertising the closed shop by the "label trades" was to arouse interest in the same policy in other unions.

The campaign for the closed shop was carried on among a large number of unions between the years 1885 and 1893. The strong closed-shop unions already mentioned were joined by the Lasters, Glass Bottle Blowers,[5] Window Glass Workers,[6] Flint Glass Workers, Machinists, and many local

[1] Spedden, "The Trade Union Label," in Johns Hopkins Studies in Historical and Political Science, Ser. XXVIII, No. 2, p. 10.

[2] Ibid., p. 14.

[3] Ibid., p. 18.

[4] Until 1883 the Cigar Makers allowed the label to be used on the product of a union member who worked in the same shop with non-unionists (Ibid., p. 51).

[5] Then known as Knights of Labor, District Assembly No. 149.

[6] In 1889 the president of the Window Glass Workers, Local Assembly 300, Knights of Labor, stated in his report that since the formation of the Universal Federation of Window Glass Workers, an international organization of European and American unions, there had not been "one single non-union factory in the country" (Report of the Fifth Convention, 1889, p. 21). This condition is said to have continued down to 1903. By 1888 both the Local

unions in the metal, printing, building,[1] and miscellaneous trades. In a few of the building trades unions, as for example the Painters, the closed shop was practically obligatory on all local unions. Everywhere the movement progressed in spite of doubt in the minds of some labor leaders as to whether the exclusion of non-unionists from employment was beneficial to their organizations.[2]

Strike statistics from 1881 to 1893 indicate the spread of the closed-shop movement.[3] In 1881 the number of strikes called for "the recognition of the union and union rules"[4] amounted to 12.1 per cent. of all strikes called by labor organizations; the number of establishments involved in such strikes was 1.19 per cent. of all struck establishments, and the number of persons involved was 4.2 per cent. of the total number. By 1892 the percentages had increased very considerably, so that they were respectively 21.5 per cent., 29.1 per cent., and 27.3 per cent. During the intermediate years, with some exceptions, the increase in percentage was fairly regular. The statistics for lockouts[5] in the same period also show that an increasing part of the lockouts

Assembly 300 and District Assembly 149, Knights of Labor, had made provision in their constitutions that their members should not work except in closed shops.

[1] Local unions of the Painters, Carpenters, Plumbers, and Bricklayers from 1885 on frequently notified workmen in their trades as follows: "None but union men need apply." "All shops have recognized the union." "No non-unionist recognized." "No card, no work."

[2] Professor R. T. Ely in his Labor Movement in America (p. 160), published in 1886, says, "Some of the most intelligent trades-unionists think that the refusal to work with a non-union man is indefensible and injurious to the cause of labor."

[3] Compiled from the Twenty-first Annual Report of the Commissioner of Labor, 1906 (pp. 42, 56). The percentages given here are somewhat higher than those of the report, since no account is taken of strikes by unorganized workers.

[4] "Under the cause 'concerning recognition of union and union rules' are classed the various causes relative to dealing with union officials and the adoption or enforcement of rules and regulations of unions governing the work of their members, one of the most frequent and important rules being against working with non-union men" (Twenty-first Annual Report of the Commissioner of Labor, 1906, p. 113).

[5] Twenty-first Annual Report of the Commissioner of Labor, 1906, pp. 70–71.

was caused by closed-shop and "recognition" demands. In 1881 such lockouts amounted to 16.6 per cent. of all lockouts and in 1892 to 36.06 per cent. Even higher were the percentages for 1887, 1888, 1890, and 1891.

Not only did individual employers, like the Birmingham Rolling Mill Company in 1884[1] and the Carnegie Steel Company in 1892,[2] lock out union employees because they demanded the closed shop, but associations of employers also pursued the same policy. In 1887 the Granite Manufacturers' Association of Boston locked out their men "on the specious plea of individualism" when the union men refused to work with "scabs."[3] In the same year the Master Masons of Providence, Rhode Island, notified the local union of bricklayers that men would be hired solely as individuals and not as unionists.[4] The following year the Master Stonemasons of St. Louis voted that work should be given "to every journeyman mason whether belonging to the Union or not."[5] In 1891 the painters' union of Milwaukee was notified by the masters that they had agreed not to "discharge non-union men on account of union matters."[6] Similarly the brick contractors of Zanesville, Ohio, in 1892 refused to recognize the closed shop. At the national convention of the Master Painters in 1892 a delegate urged the adoption of a system of individual agreements on the ground that agreements with unions were bound to result in closed-shop conditions. While the speaker was heartily applauded, no action was taken on his recommendations.[7]

During this period, although the unions were so actively

[1] Amalgamated Association of Iron, Steel and Tin Workers, Proceedings of the Ninth Annual Convention, 1884, p. 1361.

[2] Ibid., Proceedings of the Eighteenth Annual Convention, 1893, pp. 4250–4251.

[3] Painters' Journal, July, 1887, p. 2. This position was maintained by the Association until 1902, when it agreed to eliminate the "non-discrimination clause" in its contracts with the Granite Cutters (Granite Cutters' Journal, May, 1902, p. 6).

[4] Ibid., Proceedings of the Twenty-first Annual Convention, 1887, p. 24.

[5] Bricklayers and Masons, Proceedings of the Twenty-second Annual Convention, 1888, p. 45.

[6] Painters' Journal, May, 1891, p. 4.

[7] Ibid., April, 1892, p. 3.

engaged in extending the closed shop, comparatively little discussion of the question is found. The most important pronouncement by a representative labor body in favor of the closed shop in this period was that made by the American Federation of Labor in 1890. In a resolution, the first expression of its views on the subject, the Federation declared that it was "inconsistent for union men to work with non-union men, especially when they are displacing their fellow unionists, who may be engaged on strike or lockout."[1] It will be noted that this resolution is not an unqualified endorsement of the closed shop. As yet public interest in the question was slight.

The right to strike against non-union workmen came before the higher courts in some fourteen cases from 1850 to 1898.[2] In a majority of these cases strikes for the closed shop were declared to be either criminal or tortious. Yet these adverse decisions exercised no apparent influence on trade-union policy.

In the depression following the panic of 1893 the unions sustained severe losses. The percentage of strikes involving "recognition of union and union rules" greatly decreased, while the percentage of lockouts for the open shop increased. An examination of the union journals also indicates that the unions were forced in many places to concede the open shop. In 1892, for example, as many as thirty local unions inserted "no card, no work" notices in the Iron Molders' Journal. In 1894 only ten or twelve continued the practice. The Bricklayers and Masons, always a strong

[1] Report of Proceedings of the Tenth Annual Convention, 1890, p. 40.

[2] State v. Donaldson (1867), 3 Vroom (N. J.), 151; People v. Smith (1887), 5 N. Y. Crim. R., 509; Crump v. Commonwealth (1888), 84 Va., 927; State v. Dyer (1894), 67 Vt., 690; Fischer v. State (1898), 76 N. W., 594; Snow v. Wheeler (1873), 113 Mass., 179; Mayer v. Journeymen Stonecutters, 47 N. J. Eq. R., 519; Longshore Printing Co. v. Howell (1894), 26 Ore., 527; Clemmitt v. Watson (1895), 14 Ind. R., 38; People v. Davis (1898), Chicago Legal News, Vol. 30, p. 212; Chipley v. Atkinson (1887), 23 Fla., 206; Old Dominion Steamship Co. v. McKenna, 30 Fed., 48; Lucke v. Clothing Cutters Assembly (1893), 77 Md., 396; Perkins v. Pendleton (1897), 90 Me., 166; Davis v. United Portable Hoisting Engineers, 51 N. Y. Supple., 180.

union, reported an unusual number of "scabs" in 1893 and 1894. Other unions like the Painters[1] and United Green Glass Workers[2] were compelled openly to acknowledge that it was impossible to keep union men from working with "scabs" and in "non-union" shops.

With the increase in business activity which followed the Spanish-American War a new period in the history of the closed shop began. On account of the great demand for workers, trade unions were able to secure better hours, wages, and working conditions. Their membership increased very rapidly. Contemporaneously the number of strikes for the "recognition of the union and union rules" grew. The number of such strikes was twice as great in 1899 as in 1898; in 1901 they were five times as numerous as in 1898, and amounted to 36.4 per cent. of the total number of strikes called by labor organizations.

The unions began to insist that the employers should sign written agreements in which the closed shop was conceded. Hitherto, verbal understanding had ordinarily sufficed, or the closed shop had rested only upon custom. It seemed to many unions that while business was active, definite written agreements should be drawn up limiting employment to union members.[3] In all parts of the country it became increasingly difficult for non-unionists to obtain employment. In New York the building trades had almost absolute control under their arbitration agreement. In other cities, like San Francisco and Chicago, the closed shop was enforced more widely than ever before. "Unionism ran riot. . . . The newsboys, the sandwich vendors, even the girls who sold chewing gum on the streets were organized. Civil Ser-

[1] Yet the Painters in 1893 announced that none but union men would be allowed to secure a job on the buildings of the Columbian Exposition at Chicago (Painters' Journal, January, 1893, p. 2).

[2] Proceedings of the Nineteenth Annual Session, 1895, p. 103; Proceedings of the Twentieth Annual Session, 1896, p. 102.

[3] Another evidence of the increasing importance attached to the closed shop during this period was the fact that the ordinary membership card in a union was superseded by the "working card." It soon became customary to speak of the "working card system," meaning thereby the closed shop.

vice in municipal affairs gave way to the closed shop."[1] In smaller places, like Streator, Illinois, the unions boasted that it was "impossible for a man or woman to obtain work on any job, skilled or unskilled, without first belonging to a labor organization and carrying a union card."[2] While there was some exaggeration in these reports, they show with what enthusiasm the unions everywhere took up the idea of a universal closed shop.

On the employers' side dissatisfaction with these conditions was widespread. Moreover, the trend of industrial development had increased the power of the employers to oppose the unions. In all industries business was conducted on a larger scale than heretofore; in many, trusts had been formed. Even in the building industry the great construction company had to a large extent taken the place of the small contractor. Furthermore, in many leading industries employers' associations had been formed, whose members could be relied upon to stand together in dealing with the labor problem. The employers realized that the closed shop was the key to the labor situation. To rid themselves of irritating shop rules, therefore, they set out to destroy the system whereby unions enforced them.

The struggle which followed was one of the most severe ever faced by organized labor. The first of the employers' associations seriously to oppose the closed shop was the National Metal Trades Federation. In 1901, after a general strike of the Machinists,[3] the Federation resolved that, "while disavowing any intention to interfere with the proper functions of labor organizations," it would not admit union dictation in the management of business.[4] For a time the Metal Trades Federation was the only national em-

[1] Marcosson, "The Fight for the Open Shop," in World's Work, December, 1905, p. 6961.

[2] The Union Boot and Shoe Worker, July, 1901, p. 18.

[3] For a more detailed account, see Hilbert, "Employers' Associations in the United States," in Studies in American Trade Unionism, edited by Hollander and Barnett, p. 202. One or two local employers' associations like that of Dayton, Ohio, had already advocated the open shop, but their influence was not great.

[4] American Industries, April 1, 1903, p. 13.

ployers' association in active opposition to the closed shop.

The next blow to the closed shop came from an unexpected quarter and, partly on that account and partly because of attendant circumstances, created strong public sentiment in favor of the open shop. In 1902 the Anthracite Coal Strike Commission was appointed by President Roosevelt to arbitrate the great miners' strike of that year. Among other things the United Mine Workers asked that the mine operators enter into an agreement with them for the purpose of "specifying the conditions of employment which shall obtain."[1] This demand was interpreted both by the operators[2] and by the non-union men[3] as a demand for the closed shop. The award of the Commission, given on March 18, 1903, granted practically every demand of the strikers except that for an agreement. The Commission absolutely forbade the establishment of the closed shop in the anthracite industry during the period which the award covered. Section IX of the award reads as follows: "The Commission adjudges and awards: That no person shall be refused employment, or in any way discriminated against, on account of membership or non-membership in any labor organization; and that there shall be no discrimination against, or interference with, any employee who is not a member of any labor organization by members of such organization."[4] A number of labor leaders, notably Mr. Gompers, contended that the award was not to be construed as unfavorable to the closed shop. According to this view, the Commission intended merely to maintain the status quo; indeed, it "had particularly in mind to warn the operators against future discrimination against union men."[5] The interpretation of the public was different.

The award of the Commission aroused great interest

[1] Bulletin of the Department of Labor, No. 46, May, 1903, p. 520.
[2] Ibid., p. 527.
[3] In a statement to the Commission the non-unionists said, "Any agreement, if made, will render it impossible for us to continue to earn our living by our labor in and about the mine in which we are now employed, or to which such agreement applies" (Ibid., p. 521).
[4] Ibid., p. 509.
[5] The Union Boot and Shoe Worker, September, 1904, p. 3.

throughout the country, discussion centering particularly on the question of the open shop. Employers who had hitherto been fighting a losing battle with the unions were much encouraged by the award, since it proceeded from what was generally considered an impartial tribunal. Individual employers and associations of employers which had not been moved to action by the example of the Metal Trades Federation felt that they must seize the opportunity to enlist in the fight for "individual liberty."

In April of the same year the National Association of Manufacturers, an organization which had not hitherto concerned itself with labor questions, proceeded "amidst great enthusiasm" to adopt a declaration of principles among which was incorporated, word for word, the open-shop section of the coal strike award.[1] In 1902 and 1903 there came into existence in numerous cities organizations known as "Citizens' Alliances." Their agitation for the open shop was so active as to engender much apprehension among unionists. By 1906 practically every city of importance had its Alliance. In many of the larger cities general employers' associations also were formed, most of which were strongly in favor of the open shop.

Much moral encouragement was given at this time to the opponents of the closed shop by the outcome of the celebrated Miller case in the Government Printing Office at Washington. The facts in the case are as follows: One W. A. Miller, an assistant foreman in the bindery division of the Government Printing Office, was suspended and later, on May 13, 1903, expelled from Local Union No. 4 of the International Brotherhood of Bookbinders. Upon notification to this effect, the public printer on the following day discharged Miller from his position because, as he said, "the bookbinders of the Government Printing Office are all members of Local Union No. 4 of the International Brother-

[1] Proceedings of the Eighth Annual Convention, 1903, pp. 165–169. In 1904 a further article was added to the declaration of principles, stating that the Association declared "its unalterable antagonism to the closed shop" (Proceedings, 1904, p. 173).

hood of Bookbinders and under the rules of the organization are prohibited from working with a member under ban."[1] Technically the discharge was "for the good of the service."

Upon complaint of Miller to the Civil Service Commission, an investigation was made. It was proved that Miller had been compelled to relinquish his position solely because he had been expelled from the union and not because he was inefficient. The Civil Service Commission accordingly on July 6 requested the public printer to reinstate Mr. Miller at once. "No person," it ordered, "shall be removed from a competitive position except for such cause as will promote the efficiency of the public service. The Commission does not consider expulsion from a labor union, being a body in no way connected with the public service nor having authority over public employees, to be such a cause as will promote the efficiency of the public service."[2] A week later President Roosevelt himself ordered the reinstatement of Miller, on the ground that "on the face of the papers presented, Miller would appear to have been removed in violation of law." In a letter to the secretary of commerce and labor on July 14 the President set forth his views on the question. Calling the attention of the secretary to the award of the Anthracite Coal Strike Commission, quoted above, he said: "I heartily approve of this award and judgment by the Commission appointed by me, which itself included a member of a labor union. This Commission was dealing with labor organizations working for private employers. It is, of course, mere elementary decency to require that all the Government Departments shall be handled in accordance with the principle thus clearly and fearlessly enunciated."[3]

The action of the President and of the Civil Service Commission attracted the widest attention among both unions and employers. The President's vigorous pronouncement

[1] 58th Cong., 2d sess., H. Doc. No. 644, p. 148, Twentieth Report of the Civil Service Commission, 1902–1903.
[2] Ibid.
[3] Ibid., p. 149.

served to swing public feeling to an appreciable extent to the side of the opponents of the closed shop. The labor unions received the President's decision with sharp criticism. Committees were sent to Washington to persuade him to revoke his order, but he declared his decision "final."[1]

The great increase in the number of employers' associations and citizens' alliances and their deepening hostility toward the closed shop[2] led in October, 1903, to the organization of the "Citizens' Industrial Association of America." David M. Parry of Indianapolis, president of the National Association of Manufacturers and a bitter partizan of the open shop, became its first president. The new organization was designed to centralize the opposition to unionism and to the closed shop. In December, 1903, its executive committee declared that labor in demanding the closed shop was "seeking to overthrow individual liberty and property rights," and resolved that the "right hand of fellowship should be held out to all free and independent workmen, and especially, that a guarantee of full safety be offered to those now in the ranks of union labor who desire to escape the tyranny of the same."[3]

The example set by the Metal Trades Association, the National Association of Manufacturers, the Citizens' Alliances, and the Citizens' Industrial Association of America

[1] 58th Cong., 2d sess., H. Doc. No. 644, p. 148, Twentieth Report of the Civil Service Commission, 1902–1903, p. 150. On July 25 Miller returned to work. That the President's order had a temporary effect, at least, is shown by the fact that when the International Typographical Union attempted to levy a ten per cent. assessment in 1905–1907, many of its members working in the Government Printing Office refused to make payment. See Barnett, p. 289. At the present time the closed shop has practically been reestablished. As early as February, 1906, the Printing Pressman (p. 100) reported that the "frequent allusions to the open shop intended to apply to the Government Printing Office has really no meaning."

[2] "Many employers who previously, without much urging, recognized the closed shop have been carried along with it [open shop sentiment], and now avow their determination to resist the closed shop at whatever cost" (White, "The Issue of the Open and Closed Shop," in North American Review, January, 1905, p. 30).

[3] Proceedings of the Preliminary Convention, October, 1903, and also the First Meeting of the Executive Board of the Association, p. 17.

was immediately followed by a great number of national and local employers' associations in different industries.[1] In all parts of the country "open-shop movements" were inaugurated. Employment bureaus were established as a means of preventing the dependence of workmen upon the "walking delegate," while educational campaigns were instituted for the purpose of "enlightening the American people on the greatest question which has confronted them since the Revolutionary War."[2] The employers of Los Angeles and of Washington, D. C., endeavored to convert these cities into "model open-shop towns." "Open-shop schools" were established for the training of printers, telegraphers, tailors, and machinists.[3] A number of the largest American corporations joined the open-shop movement. Among them were the United States Steel Company with its subsidiary corporations, the American Tobacco Company, the Macbeth-Evans Glass Company, the Baldwin Locomo-

[1] The following employers' associations declared themselves opposed to the closed shop:—

National Associations.

American Anti-Boycott Association, National Association of Agricultural Implements and Vehicle Manufacturers, National Master Bakers' Association, National Building Trades Employers' Association, Cap Manufacturers' Association, National Association of Clothers, National Association of Erectors of Iron and Steel, National Founders' Association, National Association of Employing Lithographers, National Association of Marble Dealers, International Association of Master House Painters and Decorators, National Association of Master Sheet Metal Workers, Stove Founders' National Defence Association, Merchant Tailors' National Protective Association, United Typothetae of America. The United States Brewers' Association was suspected of open-shop sympathies, but never went on record in opposition to the closed shop.

District Associations.

Lake Carriers' Association, Managers of Docks of Lake Erie Ports, Inter-state Builders, Contractors and Dealers Association (New England), Iron League of New York.

[2] Thus, in 1901 the National Metal Trades Association began the publication of a magazine called the "Open Shop." It was continued until March, 1908, when it was merged with the "Review" and published in cooperation with the National Founders' Association.

[3] The unions declare that these schools are centers for training strike-breakers.

tive Works, the American Can Company, and Cramps' Ship Yards. The public press for the most part warmly advocated the open shop.

A considerable number of the opponents of the closed shop took pains to declare that they were not opposed to trade unions, but merely to the exclusion of non-unionists from employment. It will be proper to consider at this point how far the "fight for the open shop" was a fight against unionism. In many cases employers, after refusing to sign further closed-shop agreements, did sign genuine open-shop contracts. The agreement drawn up in 1903 between the Bridge and Structural Iron Workers and two organizations of employers, namely, the National Association of Manufacturers and the Structural Steel Erectors' Association, is an instance.[1] This agreement contained the following provisions:—

1. No restriction of material.
2. No union control over the appointment or the work of the foremen.
3. No sympathetic strikes.
4. No outside persons to interfere with workmen during working hours.
5. Employer to have full power to hire or discharge as he sees fit; membership in a labor union to have no influence in either hiring or discharging.
6. No interference with laborers loading or unloading materials.
7. Employees to be at liberty to cease work at any time.

Other agreements of the same kind might be cited.

But while a large number of employers established open shops and made no discrimination between union or non-union men, others refused to employ union men. Mr. David M. Parry, in an address before the first convention of the Citizens' Industrial Association of America, declared that if the unions "take the position that there must be discrimination against independent labor as the price for the employment of union labor," it becomes the "duty of the

[1] The Bridgeman's Magazine, May, 1903, p. 12.

employer to discriminate against union labor."[1] Other employers did not refuse to hire union men provided they applied as individuals, but they were unwilling to make agreements with the unions. Among the employers' associations which took this position were the Mason Builders' Association of Montreal (1908), the Iron League of New York City and Vicinity (1906), and the Builders' Exchange of Jacksonville, Florida (1907). In Des Moines, Iowa, in 1904, the Citizens' Industrial Alliance is reported to have posted open-shop rules in the establishments of its members, and to have advised the discharge of union men who asked non-unionists employed in those places to become members of the union.[2] Undoubtedly, the anti-union shop and not the open shop was desired by many of the employers who engaged in the open-shop crusade.

The issue offered by the employers' associations in their attack on the closed shop was met directly by the unions. On September 30, 1903, the executive council of the American Federation of Labor issued a bulletin declaring that the "trade union movement stands for the strictly union shop."[3] At the Boston convention in November of the same year the Federation placed itself on record as "being in favor of the union shop everywhere, as well in federal, state and municipal employment as in private enterprises."[4] Union after union by resolution indorsed the closed shop,[5] and the officers of the unions in their reports repeatedly warned the

[1] Proceedings of the Adjourned Session of the First Convention, 1904, p. 11.

[2] The Bricklayer and Mason, June, 1904, p. 69. The H. Marcus Skirt Company of New York City in 1906 required each of its workmen to sign an individual agreement not to join a union or to enter into a strike for a year while at work "as an individual in the open shop" of the company (People v. Marcus, 185 N. Y., 257).

[3] American Federation of Labor, Report of Proceedings of the Twenty-third Annual Convention, 1903, p. 89.

[4] Ibid., p. 211. President Gompers also commented on the open-shop movement in his reports for 1903, 1904, 1905, and 1907.

[5] Elevator Constructors, Glove Workers, Flint Glass Workers, Musicians, 1904; Electrical Workers, Sheet Metal Workers, 1905; Printing Pressmen, Theatrical Stage Employees, 1907; Bricklayers and Masons, Bridgemen, Longshoremen, 1908. Various state federations of labor also approved closed-shop strikes carried on within their jurisdictions.

members against yielding to the demand for the open shop. The Industrial Workers of the World in their manifesto for 1905 and the Trades and Labor Congress of Canada at its twenty-first annual convention, 1905,[1] expressed their approval of the closed shop.

There were, nevertheless, some dissenting voices in a few unions, such as the Slate and Tile Roofers,[2] and propositions to endorse the closed shop were defeated on the ground of expediency. In others, such as the Printing Pressmen and the Bridge and Structural Iron Workers, the open-shop question occasioned bitter disputes. President Higgins and the executive board of the Pressmen, who had signed an open-shop agreement with the United Typothetae of America,[3] were defeated for reelection. At the same time the convention repudiated the agreement.[4] The action of the Pressmen received the hearty endorsement of the American Federation of Labor.[5] Considerable feeling was shown at the 1908 convention of the Bridge and Structural Iron Workers over an attempt to secure the passage of a resolution sanctioning the open shop. Because of the prolonged strike against the American Bridge Company and other concerns, certain delegates urged either that more drastic measures be taken or that union members be allowed to "go to work for all firms indiscriminately throughout the country." After a long and sharp debate the resolution was defeated.[6]

An examination of the strike statistics from 1900 to 1905 illustrates the importance of the open-shop issue during that period. The percentage of strikes for "recognition of union and union rules" increased steadily from 13.4 in

[1] Proceedings, 1905, pp. 47, 50.

[2] Proceedings of the Fourth Annual Convention, 1907, pp. 5, 6.

[3] This organization includes book and job printers only. The American Newspaper Publishers' Association has never asked for the establishment of the open shop.

[4] Constitution, 1907, Resolutions, etc., p. 85, No. 18.

[5] American Federation of Labor, Report of Proceedings of the Twenty-seventh Annual Convention, 1907, pp. 313–314.

[6] Proceedings of the Twelfth Convention, in the Bridgeman's Magazine for October, 1908, pp. 724–760.

1900 to 41.3 in 1905.[1] The percentage of struck establishments affected by such strikes rose from 8.5 in 1900 to 14.8 in 1905, while the percentage of strikers participating in such strikes rose from 7.3 in 1900 to 22.3 in 1905. Every State in the Union, except possibly South Dakota, and many, if not all, of the Canadian provinces[2] were affected by strikes for the closed shop, and almost every industry was involved at one time or another.

The fight against the closed shop has been reflected in the increasing number of judicial decisions since 1898 concerning the right to strike against non-union men and the legality of closed-shop agreements. The weight of authority has held against the closed shop. However, a number of important decisions, notably that of the National Protective Association v. Cummings,[3] have upheld the right of unions to discriminate against non-members. The only apparent effect of the decisions adverse to the closed shop has been the encouragement they have given to the formation and growth of open-shop employers' associations. The non-union man has found little direct relief from these decisions.

Public discussion of the question of the closed shop was very active for some years following the award of the Anthracite Coal Strike Commission.[4] The American Economic Association[5] devoted parts of two meetings to its consideration, and the National Civic Federation organized discussions in which employers and unionists took part.[6] Nothing apparently was gained in this way, for neither party was willing to make concessions. In 1905 an unsuc-

[1] Compiled from the Twenty-first Annual Report of the Commissioner of Labor, 1906. No statistics are available since 1905.

[2] Proceedings of the Twenty-first Annual Convention of the Canadian Trades and Labor Congress, 1905, p. 13.

[3] 170 N. Y., 315.

[4] "So much has been said and written in magazine, trade journals and daily press on the question of the open and closed shop, that to the average disinterested reader the question is becoming, figuratively speaking, nauseating" (Weekly Bulletin of the Clothing Trades, July 29, 1904, p. 4).

[5] Proceedings of the American Economic Association, 1903, p. 173; also Proceedings, 1905, p. 140.

[6] Civic Federation Review, May 15, 1905, pp. 1–4.

cessful attempt was made to secure the incorporation of an open-shop provision in the constitution of the new State of Oklahoma.[1] More recently public interest in the subject has waned.

It remains to inquire whether the events of the past decade have resulted in inducing the closed-shop unions to modify their position. To reach a satisfactory answer on this point is difficult. If spokesmen of the unions may be believed, the open-shop movement has been an absolute failure. Many of them claim that the unions have thereby been strengthened in their determination to enforce the closed shop. In Los Angeles, for instance, the citadel of the open-shop forces, the unions as early as 1904 resolved that all shops should be either "strictly union or non-union."[2] The Glove Workers in 1903 were forced to declare for the closed shop on account of the demand of the manufacturers that an open-shop agreement be signed. Previous to that time the union had not refused to work with non-unionists, but it was unwilling to sign an agreement to continue that policy.[3]

In September, 1904, General Secretary Duffy of the United Brotherhood of Carpenters declared that in his opinion the open-shop movement had done nothing more than create "a little ripple on the surface" of the industrial world.[4] In 1905 he stated that "the first case has yet to be reported to this office where the 'open shop' policy has been forced on our members."[5] In 1906 President Huber of the Carpenters reported that two hundred and fifty mills had been unionized during the two preceding years,[6] while the general secretary again asserted that the open shop was a "dead issue as far as this organization is concerned."[7]

[1] The proposed section read as follows: "No person shall be denied or refused employment for the reason that he is not a member of any labor union" (American Industries, December 15, 1905, p. 3).
[2] The Labor Compendium, April 10, 1904, p. 1.
[3] The Elevator Constructor, April, 1904, p. 25.
[4] The Carpenter, September, 1904, p. 11.
[5] Report of the General Secretary, 1905, p. 15.
[6] Proceedings of the Fifteenth General Convention, 1906, p. 58.
[7] The Carpenter, October, 1906, p. 22.

Other unions, as for example the Molders, declared that their membership had been steadily increasing during the very years when the struggle was most severe.[1] The Molders attributed this result directly to the hostile open-shop policy adopted by the National Founders' Association.[2] The officers of the Machinists, the Bricklayers and Masons, the Sheet Metal Workers, the International Building Trades' Council, and the American Federation of Labor were optimistic in their reports throughout the most trying period of the struggle.

A few unions, on the other hand, in 1904–1906 acknowledged that they had lost ground in certain localities, or admitted that they had recognized the open shop "in a way harmless to the union."[3] Many other unions, such as the Bridge and Structural Iron Workers, were led by the existence of strong employers' associations and "generally disturbed conditions . . . not to make any demands."[4] In 1907 the president of this union acknowledged that the previous year had been a "trying ordeal."[5]

The employers who fought the closed shop undoubtedly made considerable gains, but they often overstated their success. The period immediately after the Coal Strike Award and the panic of 1907 were the high water-marks in the success of the open-shop campaign. Both periods were favorable to the hostile employer; in the first, he was backed by a strong public sentiment, and in the second the unions were crippled by the scarcity of employment.[6] In 1910

[1] Iron Molders' Journal, November, 1905, p. 848; August, 1906, p. 588.

[2] Ibid., August, 1906, p. 593.

[3] Weekly Bulletin of the Clothing Trades, January 13, 1904, p. 5.

[4] The Bridgeman's Magazine, September, 1906, p. 52.

[5] In 1907 the Bridgemen asked financial assistance from the American Federation of Labor to carry on their closed-shop dispute with the United States Steel Company, but their request was not granted.

[6] The following table, taken from the Twenty-first Annual Report of the Commissioner of Labor, 1906, p. 626, shows the percentage of successful and unsuccessful strikes for the "recognition of union and union conditions." It will be noted that in 1904 and 1905 the

the open shop is established in the steel and meat-packing industries, and generally where industrial combination is strong. Throughout the South the open shop prevails more widely than in other sections. In Chicago, Cleveland, Detroit, Washington, and Denver the unions in many trades have had to give up the closed shop. In some smaller cities, as for example Los Angeles, there are practically no closed shops at all. In other places and in other industries than those mentioned the closed-shop unions have regained much of the ground that was lost a few years ago.

The employers' associations, on the other hand, have made gains which cannot be measured in statistical fashion. The unions have learned that they must be more conservative and tolerant in the formulation of shop rules, and the employing class as a whole has learned the value of organization. As long as the unions dealt with isolated employers it was in many cases easy for them to extort extravagant concessions. In the future, organized labor will be compelled to develop a defensive as well as an offensive policy.[1] On the other hand, as the bitterness of the recent conflict lessens, employers will realize that the destruction of the unions is not practicable. Many employers who were engaged in the open-shop struggle now disclaim any intention of fighting unions as such, and attack only the closed-shop policy. "Whether sincere or not, their recognition of the right and necessity of workmen to organize marks an important step in the progress of unionism."[2]

To sum up, the history of the closed-shop movement in America falls roughly into three periods. In the first, from

employers were very successful in defeating such strikes. Unfortunately there are no statistics at hand later than 1905.

Year.	Succeeded.	Failed.
1901	57.26	42.12
1902	55.14	38.98
1903	66.48	29.82
1904	36.60	62.54
1905	43.83	54.72

[1] For a capitalistic estimate of the results of the open-shop fight see Marcosson, p. 6965.

[2] White, p. 29.

1794 to 1870, the closed shop was maintained almost entirely by local unions which did not cooperate with each other in excluding non-unionists. In the second period, from 1870 to 1901, the national unions, or a very large part of them, made the maintenance of the closed shop a national rule, and required their local organizations to enforce it as effectively as possible. In the same period there gradually developed a large amount of cooperation among local unions of different trades and among local unions of the same national union in excluding non-unionists. The third period, from 1901 to the present time, has been characterized by the efforts of the unions to maintain the closed shop in the face of the organized attacks made by employers' associations.

The opposition on the part of the employers to the closed shop also falls into three periods. In the first, from 1794 to 1836, the employers sought to prevent the exclusion of non-unionists from employment almost entirely by resort to legal processes. Members of different societies were tried for illegal conspiracies because they refused to work with non-members. In the second period, 1836 to 1901, the opposition to the closed shop was carried on by local employers' associations. Finally, from 1901 to the present time, national associations of employers have carried on the struggle for the open shop.

CHAPTER III.

The Simple Closed Shop.

In its simplest form the principle of the closed shop is embodied in the rule that members of a trade union shall not work in an establishment where non-unionists are employed, unless such non-unionists fall within classes exempted by the rules of the union from the requirement of membership. When the exclusion of non-members is carried no further than this, we may say that a union enforces the "simple closed shop."

In order to understand what persons are required to become members of the union we must understand what is meant by the jurisdiction of a union. Every union claims exclusive control over a certain trade or over a group of trades. With other work in the same establishment it has no necessary concern.[1] Any rules that it may adopt, therefore, have force only in the trades over which it claims authority. Not only does a union fix limits to its trade jurisdiction, but it also determines what class or classes of persons at work within this jurisdiction shall be exempted from becoming members. It decides, for example, whether journeymen mechanics only shall be required to join, or whether other persons, such as laborers, helpers, foremen, and employers, shall also be included. It is within these limits that the union enforces the closed shop. It does not discriminate against those classes of non-unionists in the establishment who are not within its jurisdiction or against those exempted from membership.

It is the purpose of the present chapter to discuss the relation of various classes of workmen to the closed shop.

[1] On October 3, 1862, the Baltimore Cigar Makers decided that "scabs" could work at the manufacture of smoking tobacco in the same shop with union cigar makers, since the latter "had nothing to do with tobacco manufacturing."

The workmen with which we have to deal may be conveniently divided into the following groups: "scabs" and expelled union members, ordinary non-unionists, members of rival unions, suspended and fined union members, retired and resigned union members, travelling union members, union members working at two trades, workmen in "semi-closed" shops, helpers, foremen and superintendents, employers, apprentices, workmen inadmissible to union membership.

"Scabs" and expelled union members.—In tracing the development of the closed-shop rule it has already been pointed out that "unfair" workmen, such as "scabs," "rats," and expelled union members, were the first workmen to be barred from working with unionists in good standing.[1] It will be sufficient here merely to say that it is only under exceptional circumstances that any union will allow its members to work with a "scab" or with a member who has been expelled for a criminal offense, such as embezzlement of union funds.[2] More leniency is sometimes shown to members expelled for non-payment of dues. Against the "scab," however, relentless warfare is maintained, and any unionist who ventures to work with him without the consent of his organization is either heavily fined or expelled from membership.

Ordinary non-unionists.—By far the most important class of workmen against whom American trade unionists discriminate consists of non-union men who have not "scabbed." Many of these men are non-members because they have never had an opportunity to join a union or because they have always worked for non-union employers. From a union standpoint they are differentiated from "scabs" in that they have never worked "unfairly" or in wilful opposition to union rules.

Whether non-union men of this type are allowed to work temporarily with union members in closed shops is usually

[1] See above, p. 21.

[2] The Tin Plate Workers and a few other unions allow an expelled member to work pending appeal of his case to the national union.

a matter for the local unions to decide. Many local unions, when strong enough to enforce their demands, will not allow any one to be employed in a union shop unless he has a paid-up union card in his possession. Should a non-unionist apply for employment in a shop where such a union has control, he is informed that he cannot work unless he becomes a member of the union. A few local unions have been even more extreme in their demands. In at least two cases within recent years local unions of the Machinists have insisted that no machinist might obtain employment in union shops until he had been a member of the union for at least three months.[1] In an agreement in 1900 between the local union of the Painters at Memphis, Tennessee, and the employers it was stipulated that no painter should be hired by the latter unless he held a union card paid up three months in advance.[2] The national unions for the most part look upon such rules and agreements with disfavor.

But while it is not usual to require that the employer in a closed shop shall not employ non-unionists, it is frequently provided that he shall give unionists preference over non-members in employment. In many agreements it is merely stated that preference shall be given to competent union men when workmen are to be hired, and nothing is said as to how the employer is to ascertain whether union members are available.[3] Certain unions maintain what is known as a "waiting list," on which are registered the names of unemployed members in the order of their application. If an employer needs a workman, the business agent sends him the member whose name heads the list. If the list is "optional," the employer may hire this applicant or not, as he sees fit. Should he refuse to hire him, the union will then send him the member next on the list, and so on. If the

[1] Machinists' Monthly Journal, December, 1906, p. 1104; December, 1908, p. 1068.

[2] Official Journal of the Brotherhood of Painters, Decorators and Paperhangers of America, April, 1900, p. 22.

[3] Window Glass Workers, Local Assembly 300, Knights of Labor, Scale of Wages and Rules for Working, September 15, 1899–June 15, 1900, Sec. 40.

list is "compulsory," the employer is required to hire the first union member sent him. The "union" waiting list is found chiefly in the unions of the building trades. Other unions, such as the International Typographical Union and the United Mine Workers, have developed the "shop" waiting list. The two kinds of lists differ considerably in the amount of preference conferred. When a union maintains a "shop list," it requires only that "the employee first laid off for lack of work" shall be the first to be taken on when the shop needs more workmen. When a "compulsory union list" is in force, on the other hand, an employer who wants men is required to hire the union members longest out of employment whether they have ever been in his employ or not, and he is permitted to hire non-members only when all the members of a local union have obtained employment. Comparatively few "union" lists are maintained. They are generally found in connection with "exclusive" agreements, that is, agreements under which a union engages not to allow its members to work for any employer who is not a member of the employers' association with which the agreement is made.[1]

Even more restrictive than the ordinary "compulsory" waiting list is the requirement maintained by the Brewery Workmen. For a number of years this union has had a rule that when one local union is unable to furnish as many men as the employers desire, it must exhaust the supply of unemployed members in adjacent local unions before allowing non-members to be hired.[2] Usually preferential employment is not provided for beyond the membership of a single local union or district council, but in this case it extends to a considerable part of the members of the national union.

Even where there are no waiting lists, national rules, or agreements for the preferential employment of union men it is customary for many unions to insist that the proprietors

[1] Eleventh Special Report of the Commissioner of Labor, 1904, pp. 20–21.

[2] Constitution, 1901, Art. IX, Sec. 18.

of union shops shall not hire non-union men as long as competent unionists are unemployed. When it is impossible for the union to supply workmen, there is no objection to the employment of non-unionists who are eligible for membership. In many unions employers are expected to notify the unions if they need workmen, and if a sufficient number of unionists cannot be furnished within a reasonable time, the employer is free to hire non-members.[1] Some unions, however, such as the Barbers, the Meat Cutters and Butcher Workmen, the United Mine Workers, the Plumbers,[2] and the Hotel and Restaurant Employees, do not require an employer to observe this rule when an emergency arises, because even a short delay in securing a sufficient labor force would be likely to cause irreparable loss.

When the employer cannot obtain competent union men, he is allowed to hire such non-unionists as he needs as long as they are not "scabs" and "perform the work in a satisfactory manner." Only in a few unions does restriction upon the employment of non-unionists go farther than this.[3] While in most closed shops the employer is required to hire union men in preference to non-unionists, there are many unions which do not enforce any such restriction. If the employer prefers to hire non-union men instead of idle unionists, he is allowed to do so. In the older and stronger unions this is the general practise.

In all closed shops non-unionists who have been employed must, within a certain more or less definite time, join the union.[4] This period varies greatly in different unions,

[1] In many cases the unions are given twelve hours' notice; in others, twenty-four. Longer notices are unnecessary, since the union officials ordinarily know from day to day what members are out of employment.

[2] In the Plumbers exemption from notice to the union applies principally to jobbing work.

[3] The Flint Glass Workers provide that "when competent union gatherers cannot be obtained their places may be filled from the boy help in the respective factories where the shortage occurs." See Price List of Machine Made Jars and Bottles, for the Blast of 1908 and 1909, Rules and Regulations governing the Machine and Press Department, Sec. 21.

[4] During the strike of the Cloak and Suit Makers' Union in New York City during the summer of 1910 Mr. Louis D. Brandeis, who

in some cases being as long as three months.[1] In the unions of the building trades, such as the Bricklayers and Masons, the United Brotherhood of Carpenters, the Amalgamated Carpenters, the Painters, and the Sheet Metal Workers, as well as in the Molders, the Printers, and the Printing Pressmen, wherever the local unions are strong, from twenty-four to forty-eight hours is the usual time allowed a non-member in which to apply for membership. If this application is favorably acted upon, he is initiated at the next regular meeting of the union.[2] Other unions, such as the United Mine Workers, the United Garment Workers, the Machinists, the Tin Plate Workers, the Cigar Makers, and the Meat Cutters and Butcher Workmen, allow non-unionists from ten days to two weeks in which to affiliate themselves. In a few unions a period as long as one month is given them.[3] In practically all unions the non-union man is allowed to work until he has had at least one payment of

acted as mediator in attempting to secure the settlement of the dispute, proposed that the union sign with the employers an agreement for the "preferential closed shop," that is, that the employers recognize the union, "declare in appropriate terms their sympathy with the union, their desire to aid and strengthen the union," and agree "that as between union men and non-union men of equal ability to do the job, they will employ union men" (The Outlook, August 20, p. 855). This agreement, though first opposed as being the "open shop with honey," was finally accepted by the union. The non-unionists, it is to be noted, are not required to become members of the union. In the classification adopted in this monograph such a shop is an "open shop." See also Wyatt, "The New York Cloak-Makers' Strike," in McClure's Magazine, April, 1911, p. 711.

[1] In some cases a non-union man must secure a "working permit" before he can work in a closed shop. This does not give him union membership, but apprizes the union officials that a non-unionist is at work.

[2] Bricklayers and Masons, Proceedings of the Twenty-first Annual Convention, 1887, p. 22.

[3] The New York Cordwainers in 1809 provided that "strange journeymen" who did not come forward and join the society "in the space of one month" should be sent a notification by the secretary of the society. If at the end of a second month they still did not join, a fine of three dollars was assessed upon them. Apprentices were allowed three months' time after becoming "free" in which to join the society. The Philadelphia tailors in 1827 are said to have had a rule that "when a man had worked in a shop ten or twelve days he was forced to join, or each one in the shop would be liable to a fine" (Commons and Gilmore, Vol. III, p. 367; Vol. IV, p. 141).

wages. In the Glove Workers, the Jewelry Workers, and the Longshoremen it is unusual for a non-union man to be asked to join the union until he has had two "pays." The unions realize that it is usually a hardship for a man to pay his initiation fee and dues as soon as he obtains employment.

In certain unions the periods within which non-unionists are allowed to work in closed shops are less definite. In the agreements of the Seamen and some branches of the Longshoremen with the vessel owners' associations of the Great Lakes and with the Great Lakes' Towing Company it is provided that non-unionists may be employed on vessels when union men are not available, but only on condition that they be discharged at the expiration of one round trip.[1] In still other occupations, where a period of probationary employment is necessary, new employees are not required to join the union until they have proved satisfactory to the employer. The Street and Electric Railway Employees, for instance, in their agreements with electric railway companies generally provide that new employees who are being tried out as motormen and conductors shall not be required to join the union for a period of from sixty to ninety days.[2] Similarly, in the Glove Workers, the Hod Carriers and Building Laborers, the Hotel and Restaurant Employees, and other unions which have no apprenticeship system a new employee is not asked to join the union until he has learned the trade.

Where the waiting list is rigidly enforced, the employment of a non-unionist may be terminated at any time by a unionist's becoming available. In many of the agreements of the Flint Glass Workers, the Blacksmiths, the Machinists, the Plumbers, and the Meat Cutters and Butcher Workmen it is provided that non-unionists may be hired only "until union men can be furnished." Usually a non-union man employed under these conditions is allowed to "work out

[1] Lake Seamen, Agreement with the Lumber Carriers' Association, 1907, Art. III; Longshoremen, Proceedings of the Twelfth Annual Convention, 1903, p. 65.

[2] Street and Electric Railway Employees, Year Book, 1908, p. 20.

the day," but in a few unions, particularly the Longshoremen, he is given only a half day's employment if a unionist becomes available.[1] In one of the agreements between the Lithographers and the Lithographers' Association (West), an organization of employers, it was provided that if the union could not furnish on fifteen days' notice a sufficient number of men to meet the need of any member of the Association, the latter might hire non-union men. These non-unionists were to be discharged within three months' time after the union had made known its ability to furnish competent mechanics from among its members.[2] Notices such as this are extremely unusual.

Members of rival unions.—When the trade or territorial jurisdiction claimed by two unions is identical or overlaps, the members of the two unions ordinarily refuse to work with each other. In 1898, for instance, the "Baltimore organization" of painters in its struggle with the "Lafayette organization" declared "all painters not affiliated with the Baltimore headquarters to be non-union men."[3] Seceding local unions and the national union have always been especially hostile to one another.[4] When the trade unions from 1881 on began to demand independence from the Knights of Labor, the latter refused to allow members of the unions to be employed in the shops controlled by them. It was recognized very early that the closed shop might be a powerful weapon in many jurisdictional disputes. Among those in which it has been much used in recent years are the disputes between the Glass Bottle Blowers and the Flint Glass Workers, between the United Brotherhood of Carpenters and the Wood Workers, between the Plumbers and the Steam Fitters, between the Granite Cutters, the Stone Cutters, and the Marble Workers, and between the Bricklayers and Masons and the Plasterers.

[1] Proceedings of the Thirteenth Annual Convention, 1904, p. 105.
[2] Lithographers, MS. Proceedings of the Ninth Convention, 1906, p. 72.
[3] Sixteenth Annual Report of the Commissioner of Labor, 1901, p. 899. See also Plant v. Wood, 176 Mass., 492.
[4] For an early case, see Stone Cutters' Circular, August, 1858, p. 3.

When the jurisdictions claimed by two unions are identical, members of the one organization refuse to work with those of the other under all circumstances. But if their jurisdictions merely overlap, as in the dispute between the Glass Bottle Blowers and the Flint Glass Workers, the members of one of the unions do not ordinarily refuse to work with members of the other except on the particular class of employment in dispute. Similarly, the Woodworkers would not complain if a member of the Carpenters was hired to make repairs on a shop in which the Woodworkers were employed, but they would strike if a member of the Carpenters was hired to do woodworking.

In commenting upon the constantly recurring jurisdictional disputes between trade unions, the editor of the Plumbers, Gas Fitters and Steam Fitters' Journal in 1896 lamented that less courtesy had ordinarily been shown to the holder of an "opposition card" and that life had been made "more bitter" for him than in the case of "one who has always remained outside the pale of united labor and who has always been inamicable to its interests."[1] The unions have felt that when a non-unionist secures employment in a shop controlled by them, it will not ordinarily be difficult to induce him to join their ranks. But the union in control is extremely reluctant to allow a member of a rival or hostile union to be employed in a shop. There is always the danger that he may win over the shop to his own union.

Some unions have settled their jurisdictional difficulties by issuing an interchangeable working card, as is done by the Bricklayers and Masons and the Plasterers. In other cases they have agreed to recognize each others' cards for a certain period, as has been done by the United Garment Workers and the Shirt, Waist and Laundry Workers and by the United Brotherhood of Carpenters and the Amalgamated Carpenters. These methods seem to be growing in favor.

Suspended and fined union members.—Suspension from

[1] April, 1896, p. 4.

union membership is ordinarily accompanied by the loss for a certain period of the rights and privileges attached to membership. Except that suspended members need not pay an initiation fee in order to regain "good standing" in a union, they are in effect non-members. Most closed-shop unions exclude suspended members from employment in union shops. In 1860 the Cigar Makers' Society of the State of Maryland forbade the employment of suspended members "in any shop, on any consideration, whatsoever." So strictly was this rule enforced that a suspended member was not allowed to go to work on the following morning.[1] At the present time the Cigar Makers and other unions which make the label an important device are particularly careful to see that suspended members are not employed in union shops. The unions in the structural building trades, especially the Bricklayers and Masons, exclude suspended members from employment almost absolutely. While there are rules against working with suspended members in practically all the closed-shop unions, these rules are not enforced so rigidly in other unions as in the "label trades" and the "building trades" unions.

Some unions, as for example the Granite Cutters, allow suspended members to remain at work in a closed shop provided they agree to pay up back dues and assessments.[2] Usually they are allowed to pay the union in installments. This accommodation is extended chiefly to those members who are in financial difficulties. The Window Glass Workers, Local Assembly 300, Knights of Labor, also allowed suspended members to be employed as "spare" workers when members of the Assembly in good standing were not available.[3] Special consent of the executive board, however, had to be secured in each case. Some other organizations, too weak to be exacting in the enforcement of their

[1] MS. Minutes, May 4, 1860.

[2] Most suspensions arise from union members' neglecting or refusing to pay dues, assessments, or fines.

[3] Scale of Wages and Rules for Working for Blast of 1904, Sec. 58.

rules, allow suspended members ample time in which to settle their debts.

In case members have been fined for "scabbing," all closed-shop unions, as far as possible, exclude them from employment until the fines are paid. Many fines are imposed, of course, for minor offenses. Some unions, among which the Bricklayers and Masons take chief place, discriminate against fined members in practically the same manner as they do against suspended members, no matter for what reason the fine has been imposed. In other organizations, such as the Slate and Tile Roofers[1] and the Brewery Workmen, fined members are allowed to work pending an appeal to the national executive board.

Workmen who have retired from the union.—Most unions provide that their members may withdraw or retire from active membership under certain conditions. Members who take advantage of this rule are not required to pay dues, and they are deprived of most of the privileges of active membership. Retired members are usually required to deposit their "retiring" or "withdrawal" cards with the proper union officers and to take out working cards before "seeking work under the jurisdiction of any subordinate union."[2] The president of the American Federation of Musicians, for example, has held that for a member of that union to perform with or for[3] a "resigned member" is the same as performing with a non-member, "and in principle is a violation of the interest of all locals."[4]

Travelling union members.—There are also restrictions in some unions upon the employment of travelling members who carry so-called "travelling" or "clearance" cards. In the early days of American trade unionism, as has been noted, the different trade societies, such as the New York

[1] Report of Proceedings of the First Annual Convention, 1903, p. 6.

[2] Printing Pressmen, Constitution, 1908, Art. XI, Sec. 3.

[3] All orchestra and band leaders or contractors, except grand-opera leaders, are required by the Musicians to become members of the union.

[4] The International Musician, February, 1904, p. 6.

Typographical Society and the Journeymen Cordwainers of Pittsburgh, did not refuse to work with "strangers" unless they were "scabs." In 1860 the Cigar Makers' Society of Maryland provided that strangers should not be allowed to work in union shops unless they could prove their membership in another cigar makers' society.[1] There was discrimination against travelling non-unionists and "scabs," but none against members of other local societies in the same trade. This was undoubtedly the general practice of all labor organizations until about 1870.

As soon as the scattered local organizations had formed national unions a further step was taken. Increased facilities for transportation had by this time made the travelling journeyman a serious problem, especially in certain unions, as the Iron Molders, the Granite Cutters, the Bricklayers and Masons, and the Printers, where "bumming" and "tramping" had always been prevalent. Many travelling members, especially in the building trades, would work for a few days in one locality, and then move on without becoming members of the local union. The latter naturally complained, since it was thus deprived of its dues. The practice was finally broken up in the building trades by requiring that travelling members should not be allowed to go to work in union shops until they had exchanged their travelling cards for local working cards. Accordingly in unions which have adopted this rule "a man holding a travelling card from one local and working under the jurisdiction of another, has no more unionistic rights or privileges than a non-union man," and until he deposits his card all local unions are instructed to "treat him accordingly."[2]

In a few unions also the local unions have established a form of local protection by securing the insertion in agreements with employers that none but members of the local unions shall be given employment.[3] In other agreements practically the same end is reached by a provision that pref-

[1] MS. Minutes, October 5, 1860.
[2] Slate and Tile Roofers, Proceedings of the Second Convention, 1904, p. 10, President's Report.
[3] Machinists' Monthly Journal, July, 1902, p. 405.

erence in employment shall be given to members of the local union.[1] Only a few national unions, such as the Musicians and the Longshoremen, approve such provisions. The Musicians allow members of one local union to refuse to perform with members of another who are brought into their jurisdiction to fill a season's engagement. If the engagement is a temporary one, discrimination is not permitted. The Longshoremen forbid, under penalty of expulsion, the members of one local union to accept employment under the jurisdiction of another without first obtaining its consent.[2]

A number of important unions, including the Glass Bottle Blowers, the Window Glass Workers, the Flint Glass Workers, the Machinists, the Granite Cutters, the Hatters, the United Mine Workers, the Pocket Knife Grinders, and the Wood Carvers, allow a travelling member to work on his clearance or travelling card until the next meeting of the local union.[3] He must then deposit the travelling card and secure a working card. At one time the United Mine Workers provided that a clearance card "from any legalized or recognized labor union, anywhere, known to be friendly to the United Mine Workers of America, shall be accepted."[4] In all of these unions there is little risk that travelling members will be able to change their place of employment so quickly as to evade control by local unions in whose jurisdiction they obtain work. Members who travel without cards are generally required to agree "to the initiation fee being retained until a transfer card has been produced, before being permitted to work."[5] Otherwise unions would be subject to loss through false representation.[6]

[1] Meat Cutters and Butcher Workmen, Official Journal, April, 1903, p. 24.

[2] Constitution, 1908, Rules for Locals, Sec. 3.

[3] The Hatters require the deposit of the travelling card within twenty-four hours.

[4] Constitution, 1899, Art. VI, Sec. 2.

[5] United Mine Workers, Constitution of District No. 12, 1910, Art. VIII, Sec. 4.

[6] Among the Musicians and the Theatrical Stage Employees a large number of union men are constantly travelling with theatre

Union members working at two trades.—The American Federation of Musicians in several respects has gone further in its closed-shop policy than any other American trade union. One rule peculiar to this union requires that members who work at some other trade in addition to performing in a band or orchestra must join the union of that trade, provided it is an organized one and affiliated with the American Federation of Labor. Moreover, such members must work only in closed shops even though the union of the trade permits its members to work in open shops.[1] For violation of this rule a member of the Musicians is liable to be fined or otherwise penalized exactly as if he had performed in a band with non-union musicians. The primary reason for the adoption of this rule seems to have been a desire to gain favor for the Musicians among other unions. If the members of another union form a band, the Musicians regard it as "non-union," and refuse to allow their members to perform with it even on Labor Day.

Workmen in "semi-closed" shops.—In marked contrast to the policy of the Musicians is that of certain unions which allow their members to work in what may be designated as "semi-closed" shops. Such shops are found in a few unions which have jurisdiction over two or more allied trades, such for instance as the Bricklayers and Masons, the Painters, Decorators and Paperhangers, the Flint Glass Workers, the United Garment Workers, the Typographical Union, and the Longshoremen. In each of these organizations local unions are formed in each "branch" or trade whenever possible. It often happens that when the local union in one branch is stronger than that in another, it enforces the closed shop for itself, but refuses to strike against the employment of non-union men on work over which the other branch has jurisdiction.

companies. These members are required wherever they go to perform or work only with unionists. An exception to this rule is made when no local union exists in the locality. Usually such members hold membership cards in certain local unions instead of travelling cards.

[1] The International Musician, June, 1906, p. 3. Decisions of the Executive Board, No. 56.

Curiously enough, it has been in the Bricklayers and Masons' International Union, where the exclusion of non-union men from employment has been carried out with unusual strictness, that the most important cases of this character have occurred. The bricklayers have always outnumbered the masons in the national union, and their branch is in most localities the better organized. The bricklayers, moreover, have local unions in many localities where the masons are entirely unorganized. As a consequence, local unions of bricklayers have frequently enforced the exclusive employment of their own members on the brick work of buildings, but have raised no objection to the employment of non-unionists or even "scabs" to do the masonry work. Either the bricklayers were indifferent, or they thought it impracticable to compel employers to organize masons' unions. The matter has frequently been complicated by the fact that different employers had contracted for the masonry and the brick work.

For a number of years the masons protested vigorously against the failure of the bricklayers to discriminate in favor of union masons. Finally, in 1890, the breach between the two branches had grown so wide that the Pittsburgh masons' union suggested that the masons secede from the International Union and form a separate organization.[1] The situation has gradually been improved by the adoption of "working codes" in many localities. These "codes" are agreements between the local branches of bricklayers and of masons. They provide that union men exclusively, both bricklayers and masons, must be employed on a building if men of either branch are to work on it. Some of the "codes" require that a contractor pay a fine for employing either non-union masons or bricklayers.[2] Other "codes" provide that members of the International Union shall not be allowed to work for an employer unless he contracts for both the

[1] Report of the President and Secretary for the Term ending December 1, 1890, Report of Secretary, p. 39.

[2] Forty-first Annual Report of President and Secretary, for the Term ending December 1, 1906, pp. 136–137.

brick work and the masonry of a building.[1] The national officers have vigorously urged the adoption of such working arrangements.

The Flint Glass Workers, a union composed of many different branches, have adopted rules intended to prevent the existence of the "semi-closed" shop. Thus provision has been made that union glass workers shall refuse to make "blanks" for non-union glass cutters,[2] that "no mould maker shall make or repair moulds, to be worked by non-union glass workers,"[3] that "no union lamp worker shall work tubing made by non-union tube blowers,"[4] and that "no glass worker shall be allowed to make bottles or stoppers for non-union stopperers to work."[5] Likewise the Musicians provide that union prompters shall not officiate at entertainments where non-union musicians are employed unless unionists are unavailable.[6] Many other unions, such as the Potters and the Brewery Workmen, have adopted similar rules. No union will allow its label to be attached to the product of a shop in which non-union men are employed on any work over which the union claims jurisdiction.[7] The "semi-closed" shop is still common, however, among the Meat Cutters and Butcher Workmen and the Longshoremen.

Helpers.—Several closed-shop unions, as for example the Plumbers, the Steam Fitters, the Printing Pressmen, and the Ceramic, Mosaic and Encaustic Tile Layers, are composed of journeymen and helpers. As far as possible the latter are organized into separate local unions. The helpers are thus permitted to some extent to regulate their own affairs, and their association is generally spoken of as the "junior organization." It is not independent of the "senior" or journeymen's branch of the union, but on the

[1] Thirty-sixth Annual Report of President and Secretary, December 1, 1901, p. 196.
[2] Constitution, 1895, Art. XXVII, Sec. 1.
[3] Constitution, 1886, Art. XXV, Sec. 1.
[4] Constitution, 1895, Art. XXXII, Sec. 5.
[5] Ibid., Constitution of Local Unions, Art. XX.
[6] Constitution, 1910, Standing Resolutions, No. 18.
[7] Spedden, pp. 51–55.

contrary is usually compelled to adjust its working rules in accordance with the wishes of the journeymen. In the unions mentioned, union helpers are not allowed to work with non-union journeymen, and in turn journeymen members of these unions must see that their helpers carry union cards. The Printing Pressmen provide, for instance, that "all apprentices in web pressrooms must come from the assistant's unions,"[1] while the Tile Layers have a rule that "all tile layers must work with union helpers."[2] The United Association of Journeymen Plumbers, Gas Fitters, Steam Fitters and Steam Fitters' Helpers requires that union steam fitters employed on out-of-town work "shall work with no helpers except those who belong to the United Association," provided there is a helpers' union in the city from which the journeymen come.[3] Since the adoption of this rule, however, agreements have been signed with employers which provide that non-union helpers may be employed until a local helpers' union is organized.[4] The International Association of Steam, Hot Water and Power Pipe Fitters has followed a similar policy.[5]

Foremen and superintendents.—Foremen, "bosses" and superintendents in many unions are admissible to membership. Whenever such membership is compulsory, they are required to observe the same rules as journeymen regarding the persons with whom they work. In fact, an additional responsibility for the maintenance of the closed shop is placed upon them, since they have the power to hire and discharge workmen. In such unions if a non-union foreman or superintendent refuses to join a union when asked to do so, the union will endeavor to effect his discharge. Many strikes "for the recognition of union rules" have originated

[1] Constitution, 1908, By-Laws, Art. III, Sec. 2.
[2] Constitution, 1905, Art. XV, Sec. 4.
[3] Constitution, 1902, Art. XXV, Sec. 18.
[4] Plumbers, Gas and Steam Fitters' Official Journal, May, 1905, p. 13.
[5] In their Constitution for 1886 (Art. IV, Sec. 5) the Window Glass Workers, Local Assembly 300, Knights of Labor, provided that no glass blower should "take an apprentice to blow who is not a gatherer and a member of the Assembly."

in this manner. In a few unions, on the other hand, such as the Iron Molders and the Paving Cutters, foremen in union shops cannot continue as active members of the union, but must hold retiring cards.

In some national unions, as for example the Shirt, Waist and Laundry Workers, the Table Knife Grinders, and in many local unions in the building trades, membership is optional with foremen. In other unions, like the Glove Workers, foremen are excluded from membership entirely. Yet even in such unions certain requirements are often imposed on the foremen of union shops. If a foreman handles the tools of the trade, the union requires that he must be a practical mechanic. Strikes have often been called against shops because the foremen had never fully learned the trade. In the building trades, union men often refuse to work with foremen of this kind, not only on closed-shop jobs but on open-shop jobs also.[1] As long as the foreman is a competent mechanic or as long as he refrains from working at the trade, those unions in which foremen are inadmissible to membership do not object to the employer's choice of a foreman. In large shops, of course, foremen seldom work at the trade.

Employers.—In a number of unions, employers who work at the trade are required to become members of the union. They must not employ non-unionists, and if they do they are fined or are expelled from union membership and "scabbed." The Bricklayers and Masons fine a contractor who is a union member as much as one hundred dollars for hiring "scabs." Likewise in all unions in which the employer is required to become a member, journeymen members are penalized for working with an employer who is not a member of the union. Still severer penalties are

[1] Most unions in the building trades require foremen to become members of the union because they work usually with the journeymen. Occasionally, however, they have been forced to sign agreements in which it was provided that the foreman "shall be the agent of the employer," and "shall not be subject to union rules." See Bricklayers and Masons, Forty-second Annual Report of President and Secretary, for the Term ending December 1, 1907, p. 178.

imposed when the employer has been expelled from the union.

In many unions an employer who does not work at the trade is allowed to retain active membership in a union but is not required to do so. He can keep "in good standing" only as long as he "pays the scale of wages, hires none but union men and complies with the constitution and by-laws" of the organization with which he is affiliated.[1] In many unions he is forbidden to join an employers' association. Employers who hold retiring or withdrawal cards are likely to have their membership taken away if they attempt to run open shops. The Barbers[2] and the Bakery and Confectionery Workers afford many examples of the enforcement of this rule.

The Musicians require that all persons who take contracts for performances in which union musicians are to participate must be union members. In addition they insist that all employers who play in union bands and orchestras must employ only union labor, if the trade to which their workmen belong is organized in a union affiliated with the American Federation of Labor. In 1903 Secretary Miller reported that he had frequently ordered "barber bosses, cigar manufacturers (on a small scale), and painter bosses to be stricken from the roll" because of their refusal to employ union men.[3] In unions other than the Musicians there is little occasion to enforce such a rule, since it rarely happens that journeymen in one trade carry on business as employers in another.

In those unions in which employers are inadmissible to union membership they are allowed to work in their own shops. Objections have occasionally been raised against allowing employers who have never learned the trade to do a journeyman's work, but it is the general feeling among the unions that even if an employer has not learned the trade he should be allowed to work in his own shop or factory.

[1] Electrical Workers, Constitution, 1901, Art. VI, Sec. 4.
[2] The Barbers' Journal, July, 1900, p. 147; December, 1901, p. 324; January, 1906, p. 283.
[3] Proceedings of the Eighth Annual Convention, 1903, p. 37.

When the shop is conducted by a firm or a joint-stock company, restrictions are often placed upon work's being done by members of the firm or by stockholders in the company who are not members of the union. In the building trades the unions usually limit the number of firm members or stockholders who may be permitted to do journeymen's work without becoming members of the union.[1] In other agreements members of firms and stockholders are restricted to certain kinds of work. If it were not for regulations of this kind, journeymen in many trades, such for example as plumbing, could organize firms to take contracts at prices that would amount virtually to cutting the union rate of wages. To deprive such firms of union labor unless they agree to limit the number of working employers restricts them to contracts of minor importance.[2]

Apprentices.—Apprentices have a peculiar status in closed shops. They are rarely admissible to full union membership, but they are prospective union members and, in a fashion, wards of the unions. Almost all closed-shop unions require that apprentices must be "registered on the books of the union." The Hatters require that all work in union factories must be done by union members "exclusively, or by registered apprentices."[3] No apprentice is registered until it has been ascertained whether his employer is entitled, under union rules, to have an apprentice. If trouble occurs in the enforcement of this rule, it is usually provided that the shop where the difficulty occurs shall be declared "unfair," and that "no union man shall accept employment in such shop."[4] In the unions of the building trades an apprentice is ordinarily not permitted to go to work "unless he is on record."[5] In some cases it has been agreed with the employer that the apprentice shall "not be subject to

[1] The Electrical Worker, July, 1898, p. 7.

[2] Stockholders in union cooperative shops and factories are always required to keep "in good standing."

[3] Constitution, 1900, Art. II, Sec. 2.

[4] Horseshoers, Constitution, 1908, By-Laws, Art. XXIII, Sec. 8.

[5] Bricklayers and Masons, Thirty-seventh Annual Report of President and Secretary, December 1, 1902, Report of President, p. 2.

union rules and shall at all times be under the control of the employer."[1] Apprentices who have been registered in the shop of one employer are not allowed, except in unusual cases, to leave his employ until the expiration of their term of apprenticeship. Union members will not ordinarily work with "runaway" apprentices.

In many unions an apprentice is required to carry an "apprentice card," for which a small fee is sometimes charged. This card must be renewed at regular intervals, exactly like a journeyman's card.[2] Thus, the Painters provide that wherever the "working card system," that is, the closed shop, is enforced, apprentices must carry working cards.[3] Since 1896 apprentices in "label shops" controlled by the Cigar Makers have been "honorary" members of the union.

Apprentices who go to work in "scab" or struck shops ordinarily become "unfair," and are "liable to such penalty or fine as the local society may inflict."[4] If they are fined, they cannot work with union journeymen until their fine has been paid. If their names are taken off the register of the union, they are permanently excluded from work in closed shops. Whether apprentices are required to strike with the journeymen or not depends partly on how far their remaining at work will "materially affect the position of either party to the controversy."[5] If the interruption of apprenticeship will seriously handicap the apprentice in learning the trade, he is not ordinarily required to strike with the journeymen.[6]

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[1] Joint Arbitration Agreement between the Chicago Masons and Builders' Association and Union No. 21 of the Bricklayers and Masons' International Union, April 1, 1903, to May 1, 1905, p. 30.

[2] Motley, "Apprenticeship in American Trade Unions," in Johns Hopkins University Studies in Historical and Political Science, Ser. XXV, Nos. 11–12, pp. 79–80.

[3] Constitution, 1902, Art. XXXXV, Sec. 4.

[4] Constitution and By-Laws of the Hat Coners' and Slippers' Society of Danbury, Conn., and Danbury District, Art. X, Sec. 3. Reprinted in the Sixth Annual Report of the Bureau of Labor Statistics of the State of Connecticut, 1890, p. 314.

[5] Motley, p. 88.

[6] Ibid.

The Printers, the Printing Pressmen, and the Steel and Copper Plate Printers allow local unions to admit apprentices to "conditional membership" in the last year of their apprenticeship. Should an applicant for such membership be refused admission on the ground of incompetency, however, the national unions have declared that it is not either "necessary or proper that union men should refuse to continue at work" where the rejected candidate is employed.[1] Another year of his term remains in which it is possible that the apprentice may become proficient.

Workmen inadmissible to union membership.—From almost every union certain classes of persons are excluded on account of sex, race, or incompetency. These persons may be willing to join the union, but they are ineligible to do so, and they are not allowed to work in closed shops. Opposition to them is as strong as, if not stronger than, to "scabs;" it is always stronger than to ordinary non-union men. In the building trades, union members have repeatedly refused to work with unskilled laborers or "handy men" even on open-shop jobs. The Bricklayers and Masons at one time had several local unions in the South which refused to work with competent negroes, but made no objection to the steady employment of non-union whites eligible for membership. If non-unionists who are admissible to membership are allowed to work, there is a possibility that they may join the union, but every person inadmissible to union membership who is allowed to do work claimed by the union for its members weakens the control of the union over the trade.[2]

A word may be said finally concerning the relation of territorial jurisdiction to the enforcement of the closed shop. In many American trade unions the jurisdiction of one local

[1] Printing Pressmen, Constitution, 1908, By-Laws, Art. III, Sec. 4; Steel and Copper Plate Printers, Constitution, 1900, General Laws, Sec. 22.

[2] For humanitarian reasons, old men ineligible to union membership are sometimes allowed to work at their trade in union shops. The Musicians permit union members to perform with amateur musicians who are ineligible to membership, provided the latter do not compete with union bands and orchestras for engagements.

union extends in any direction half way to the nearest sister local, and thus there is no locality where some local union does not have authority. In such unions, union men, wherever they go, are required to observe the closed-shop rule. In other unions local organizations are restricted in their jurisdiction to the limits of a city or to a certain district, so that some localities are not under the jurisdiction of any local union. In such places it is not obligatory upon union members to refuse to work with non-unionists.

CHAPTER IV.

The Extended Closed Shop.

The application of the closed-shop principle is not limited to a single shop, but in many unions has been extended to cover two or more shops. These separate shops taken together are considered by the unions as one shop, and the principle of exclusion is enforced in them as if they were a single shop.

The simplest form of the extended closed shop is found in union regulations concerning subcontracting. In the building trades a general contractor often sublets part of the work on a building to another contractor. Where the job is a large one, several of these subcontractors may employ men at work which falls within the jurisdiction of a single union. Thus one of them may have the subcontract for laying floors, another for erecting doors, and another for setting window-frames. In each of these cases the subcontractor would employ carpenters. At the same time the general contractor may have reserved some carpentry work to be done under his immediate direction.

When a general contractor sublets work, he usually feels that he is not responsible to the union for the method in which the subcontractor conducts the work. Since he himself does not hire the workmen, he regards each subcontract as a separate job or shop. In his opinion if one of his subcontractors employs non-union men, it should not be a cause of complaint by the union against other subcontractors or against himself. Each subcontractor who employs union men maintains likewise that since he exercises no control over the general contractor or over other subcontractors, strikes should not be called against him if they employ non-unionists. Many unions, however, insist that all the subcontracts shall be regarded together as a single

job or shop, and demand that all workmen in their trade employed on the contract shall be unionists.

In the building trades the Bricklayers and Masons have been particularly active in this policy. Many of their local "working codes" and agreements have provided that "fair" employers shall not sublet work to non-union contractors.[1] The national executive board has also decided in several cases that it is not permissible for union bricklayers and masons to work with non-members for a "fair" firm which has sublet to non-union employers or for a "fair" employer who has subcontracted from an "unfair" firm.[2] Union members are thus prohibited from working for one subcontractor if any other on the same building employs non-unionists of the same trade. The United Brotherhood of Carpenters,[3] the Granite Cutters,[4] and the Bridge and Structural Iron Workers[5] also oppose the employment of their members on a building if any part of it has been subcontracted to or from an "unfair" employer. The Bridge and Structural Iron Workers, however, are forced to allow their members to work for "fair" employers who subcontract from the American Bridge Company and other large "unfair" concerns which are subsidiary to or in close alliance with the United States Steel Corporation. These firms control so much important work throughout the country that unless the union made some concession its members would be deprived of much employment.

The extended closed shop has also been enforced by certain unions in cases where a manufacturer buys from another manufacturer part of the goods he sells. The two establishments, in these cases, have been considered a single concern. This policy is almost entirely confined to unions in which the label is important. None of these unions, as for example the Cigar Makers, the United Garment Work-

[1] The Bricklayer and Mason, July, 1903, p. 4.
[2] Twenty-sixth Annual Report of the President and Secretary, 1891, p. lxxiv; Thirty-seventh Annual Report, 1902, p. 69.
[3] The Carpenter, March, 1908, p. 20.
[4] The Granite Cutters' Journal, June, 1906, p. 5.
[5] The Bridgeman's Magazine, April, 1903, p. 4.

ers, and the Upholsterers, allow an employer the use of the label if he buys the output of a non-union factory or shop.

Occasionally a strong union, even though it does not have a label, will object if a union employer subcontracts to non-union shops. A case of this kind occurred in the Glass Bottle Blowers in 1903. At that time the Cumberland Glass Manufacturing Company, a union plant, sublet part of its work to non-union factories. Its action was immediately considered by the executive board of the Blowers. President Hayes declared that the company could not be "too severely censured," and other members of the executive board favored the calling of a strike and the adoption of other "radical measures." A majority of the board, however, thought it best not to force the issue,[1] but soon afterwards the conference committee of the union informed the representatives of the Green Glass Bottle and Vial Manufacturers that the time was coming when union men would not work in a factory which purchased the product of non-unionists.[2]

The unions have extended the closed shop in another way. Many unions require an employer who hires union men in one shop to hire unionists in other shops in the same trade of which he is the proprietor. Thus an employer's entire business, in so far as it falls within the jurisdiction of a union, is regarded as a "shop." Probably the first union in which a rule of this kind was adopted was the National Trade Association of Hat Finishers of the United States of America. As early as 1863 it declared that it was not "right for a fair journeyman to work for a boss having a fair and a foul shop in the same town or district."[3] The Cigar Makers at the first convention of their national union in 1864 required that the practice be discontinued "of any

[1] Glass Bottle Blowers, Proceedings of the Twenty-seventh Annual Session, 1903, pp. 39–40.

[2] Manufacturers' Report of the Proceedings of the Joint Wage Committee, Representing the Green Glass Bottle and Vial Manufacturers and the Members of the Glass Bottle Blowers' Association, 1903, pp. 12–13.

[3] Constitution, 1863, Standing Resolutions, 5th.

union allowing any of its members to work in a shop or manufactory that employs no union men working for them out of the shop or manufactory."[1] By itself the rule is not very clear, but the context reveals that the intent of the rule was to forbid union employers to hire non-unionists to make cigars outside of their shops.

At the present time the Hatters and the Cigar Makers, as well as most of the other label unions, require that if an employer runs two or more shops, all of them must be unionized before the employer is allowed the use of the label.[2] If the employer in these trades does not desire the use of the label, the unions rarely attempt to enforce the closed shop in all his establishments by a threat to strike in one. The Printing Pressmen, for instance, in 1905 allowed the Brooklyn Eagle to run its newspaper office as an open shop, while the book and job office was a closed shop.[3] The same policy is pursued by the Printers and the Stereotypers.

The policy of the building trades unions toward an employer or contractor who conducts two or more shops or jobs at the same time is illustrated by the following typical provision in the constitution of the Plasterers: "No member of any local shall be allowed to work for an employer or builder who is employing non-union men in another city where a sub-association exists."[4] It is so well understood as not to need statement that no member is to work for an employer who hires non-union men on any job in the same city. Frequent strikes have been called by the Bricklayers and Masons, the United Brotherhood of Carpenters, the Painters, the Plumbers, the Steam Fitters, the Sheet Metal Workers, and the Bridge and Structural Iron Workers to enforce similar rules. Whether the employer be an individual, a firm, or a corporation makes little if any difference in the attitude of the building trades unions. Thus in 1893, when the Painters found that a contracting firm of two

[1] Journeymen Cigar Makers' Union of the United States, MS. Proceedings of the National Convention, 1864, p. 6.
[2] Spedden, pp. 59–60.
[3] The American Pressman, March, 1905, p. 117.
[4] Constitution, 1906, Art. IX, Sec. 7.

partners ran one of their shops as a union establishment under one partner and another shop as non-union under the second partner, the national executive board declared that it was improper for union men to work under such conditions, and the local union was directed to go on strike until both shops were unionized.[1] Several unions have also struck against corporations, as for instance against the Fuller Construction Company, because they have not put unionists at work on all their jobs.

It is not always easy to secure cooperation among different local unions in the enforcement of the extended closed shop. The local union whose members a firm is hiring is not easily persuaded to strike simply for the benefit of some other local union.[2] Where the establishments of the employer are within the jurisdiction of a single union, the union is more likely to make an effort to extend the closed shop over all the establishments.

Only two of the unions in the metal trades have ever seriously considered the desirability of refusing to allow an employer to operate one or more of his plants as non-union while the remainder are run as union. One of these organizations is the Molders. In 1895 it was learned by the Molders that a corporation which was running a union foundry in the East had also a non-union foundry in the West,[3] but not until 1899 were the national officers instructed by the convention to bring pressure to bear upon the former shop in order to unionize the latter. In the Amalgamated Association of Iron, Steel and Tin Workers the question has been more serious. In 1900 the Republic Iron and Steel Company and the American Steel Hoop Company refused to sign agreements covering their non-union mills. The president suggested at the time that strikes should be called against any corporation which refused to sign the scale for all of its plants.[4] The following year the Association de-

[1] Painters' Journal, July, 1893, p. 5.
[2] Amalgamated Sheet Metal Workers' Journal, August, 1907, p. 316.
[3] Proceedings of the Twentieth Session, 1895, p. 74.
[4] Proceedings of the Twenty-fifth Annual Session, 1900, p. 5764.

manded that the companies should "sign the scale for all, or none." The American Steel Hoop Company, the American Sheet Steel Company, and the American Tin Plate Company refused to sign agreements for any of their mills except those already acknowledged to be union. All of these concerns were connected with the United States Steel Corporation. Feeling that its prestige depended upon the inclusion of all the mills in the agreements, the Association in July, 1901, called a strike against all of the above companies. The fight was bitterly contested for two months and the Association was defeated.[1] Since then the Association has not been strong enough to renew its demands.[2]

The Flint Glass Workers have used similar tactics. When the National Glass Company was formed, the Flints asked that the seven non-union factories which had been taken over by the company should be unionized.[3] To this demand the directors of the company acceded. Later on, in 1904, when an attempt was made by the company to open two non-union factories, a strike was promptly called in all of its union plants.[4]

The Musicians have carried the principle of exclusion as expressed in the extended closed shop farther than any other union. Practically ever since the organization of the National League of Musicians in 1886 union bands have not been allowed to participate "in any procession, tournament or public entertainment" in which bands composed of enlisted men of the United States Army or Navy take part, unless the occasion is one in which the official duties of the government band require its participation.[5] The American Federation of Musicians in 1903 provided for the imposition of a fine of fifty dollars on members who violated this rule

[1] See the Amalgamated Journal, July 18, 1901, to September 19, 1901.

[2] The Amalgamated Association struck against the American Sheet and Tin-plate Company in 1909, but in this case the strike was simply to retain the closed shop in mills then unionized.

[3] Report of the Industrial Commission, Vol. VII, 1900, p. 167.

[4] Coopers' International Journal, March, 1904, p. 138.

[5] National League of Musicians, Proceedings of the Convention, 1892, pp. 50–51.

and for expulsion if the fine was not paid within sixty days. If a local union failed to enforce the rule, its charter was to be revoked.[1] Since the adoption of these regulations union bands have performed with bands composed of enlisted men only when the latter are escorting an officer, a foreign guest, or a military command of the United States.

The Musicians also forbid union bands and orchestras to perform at a "parade, festival or conclave" with bands and orchestras composed of non-union professional musicians.[2] An exception to this rule is made in the case of a non-union band which comes from a city where there is no local union of musicians. The rule applies to bands and orchestras of every kind, including militia bands, lodge bands and orchestras, and even bands composed of members of other labor unions. The rule applies to a reunion or conclave in its entirety. Thus, if an army or navy band is to play at a banquet and union bands are to play at a parade, "both parade and banquet being part of the same festivity," the union bands "could not accept such services."[3] In some cases, however, where the refusal of union bands to perform with non-union organizations would have disarranged the program of an occasion of national importance, the executive board or the president of the Federation has suspended the rule.[4] Frequently, too, in the case of local functions local unions allow Federation bands to play with bands composed of non-unionists when a refusal to do so would be likely to provoke public criticism.

In 1908 the Federation provided that all union bands which contracted to furnish music at summer or winter places of amusement should incorporate in their contracts a provision that none but union bands should be employed there during the season. Bands were to observe this rule

[1] Proceedings of the Eighth Annual Convention, 1903, p. 107. As army and navy bands are paid by the Government, they can accept engagements for less than other bands. Hence opposition to them is greater than in the case of an ordinary non-union band.

[2] The International Musician, May, 1904, p. 1.

[3] Ibid.

[4] Proceedings of the Thirteenth Annual Convention, 1908, p. 43.

whether they took contracts in the jurisdiction of the local union to which their members belonged or in the jurisdiction of some other local union. President Weber of the Musicians has expressed doubt as to the practicability of the regulation, but has indicated his belief that the principle involved is a proper one.[1]

On at least one occasion an organization of marine officers, although professing not to be a labor union, has adopted the policy of the extended closed shop. In 1904 members of District No. 2 of the American Association of Masters and Pilots of Steam Vessels refused to serve on any vessel in the fleet of the Pittsburgh Steamship Company until a non-union captain had been discharged and a unionist hired in his place.[2] The strike affected nearly one hundred vessels on the Great Lakes.

The Longshoremen collect a fine from an employer before they allow their members to load or unload a vessel that has been unloaded or loaded by non-unionists. This rule was adopted by the union in 1893,[3] one year after its organization, and is still retained. In case an employer refuses to pay the fine levied against the vessel and continues to employ non-unionists to do loading and unloading, provision is made for doubling the penalty.[4] The amount of the original fine is based in general upon the difference between union and non-union wages.[5] This rule has not however been rigidly

[1] In a recent decision President Weber has forbidden travelling bands to accept engagements at any Chicago summer resort or at Riverview Park, Baltimore, except in accordance with the terms of the 1908 resolution.

[2] Statement by the Lake Carriers' Association to the Cleveland Civic Federation, May 31, 1904, p. 8.

[3] Commons, "Types of American Labor Unions: The Longshoremen of the Great Lakes," in Quarterly Journal of Economics, November, 1905, p. 70.

[4] Constitution, 1908, Art. XVI, Sec. 1.

[5] "Whenever any vessel or barge loads or unloads with non-union men, then it shall be the duty of the local where such loading or unloading was done to notify the General Secretary-Treasurer to enforce an extra charge of ten cents per hour for loading lumber and ten cents per thousand for unloading lumber; two cents per ton for unloading iron ore and coal; twenty-five cents per thousand bushels for elevating or trimming grain; two cents per ton for

enforced. Many vessels have been loaded and unloaded by non-union men and no penalty has been imposed upon them because the local unions in the ports where such vessels call are poorly organized. The Longshoremen, like all labor unions, do not attempt to discipline an employer if they realize that they are unable to carry the affair to a successful issue. Since the union was locked out by the Lake Carriers' Association in 1909 no fines have been collected from grain and ore vessels. The Lumber Carriers' Association still signs contracts with lumber-loading unions in ports of the Great Lakes. In these agreements it is provided that a fine, usually five cents per thousand feet of cargo, shall be levied upon all vessels which load with non-union men when unionists are available.[1] As a matter of fact, a majority of the fines imposed have always been on boats in the lumber trade. Outside of one or two instances on the Pacific Coast no attempt has been made by the Longshoremen to fine ocean-going or coasting vessels for employing non-union men to load or unload cargoes.

The union has also insisted that on the Great Lakes cargoes shall be loaded in their entirety by its members. Captains of vessels frequently hired longshoremen to place a cargo of iron ore on board their boat and then had the deck hands "trim" the cargo in the hold. To prevent this practice, the Longshoremen in 1902 provided that when ore vessels left their loading ports untrimmed by union members, they should pay a fine of three and one half cents per ton of cargo before being unloaded by union members.[2] In 1904 the Longshoremen proposed an agreement with the Lumber Carriers' Association wherein it was provided that an increased rate of ten cents per hour was to be paid union

trimming ore and coal and for boats which do not trim, two cents per ton extra for unloading, provided further that boats loading or unloading lumber shall be punished by enforcing grain, coal or ore rates and those loading ore, coal or grain shall be punished by enforcing lumber rates" (Constitution, 1909, Art. XVI, Sec. 1).

[1] Lumber Carriers' Association of the Great Lakes, Membership List and Agreements, 1910, pp. 48, 51, 53.

[2] Proceedings of the Eleventh Annual Convention, 1902, p. 151.

loaders to handle lumber which had been piled by non-unionists in yards within the jurisdiction of any local union.[1] This provision the Lumber Carriers would not accept.

The policy of the Longshoremen in fining boats which have been loaded by non-union labor is evidently a modification of the principle of the closed shop. The end in view is the unionizing of all longshore work done for any one vessel. The union does not refuse to unload vessels loaded by non-unionists, since this would be impracticable. By enforcing the payment of fines the Longshoremen aim to make it unprofitable for a vessel to hire non-union men.

Even in many unions in which the extended closed shop is not ordinarily enforced it is frequently invoked as a war measure. If an employer is "scabbed" or becomes "unfair" or has a strike called against him in one shop, it is the policy of many unions to strike all of his shops. Thus the Plasterers provide that no member of the union shall be allowed "to work for any firm or corporation after the Executive Board has decided said firm or corporation unfair."[2] The general executive board of the Plumbers has power to suspend any local union which allows its members to work for an employer who has been declared "unfair" in another local.[3] The Molders forbid their members to work on patterns brought from a struck shop[4] or to work for an employer who takes a contract from another employer whose shop has been struck.[5] The Pattern Makers,[6] the Saw Smiths,[7] and many other unions refuse to work on jobs that come from shops where strikes are in progress.

The Musicians have a rule that when a theatre is placed upon the "unfair" list of the union, all other theatres under

[1] Proceedings of the Thirteenth Annual Convention, 1904, p. 227.
[2] Constitution, 1908, Art. IX, Sec. 7.
[3] Constitution, 1904, Sec. 222.
[4] Iron Molders' Journal, July, 1885, p. 14; May, 1891, p. 7.
[5] Constitution, 1888, Art. XIII, Sec. 7. When the proprietor of a struck shop sends out work to be done by another establishment, the latter is virtually working on a subcontract.
[6] Laws for Government, 1900, Sec. 40, Clause 4.
[7] Constitution, 1902, Art. XIV, Sec. 3.

the same management, wherever located, shall be declared "unfair" by the executive board.[1] In practice the executive board is slow in taking such action against the management of an "unfair" theatre. In all unions, when an employer is on the "unfair" list of the national organization, members of all local unions are forbidden to work for him.[2] An employer who is declared "unfair" by a local union, however, does not thereby necessarily become "unfair" to all locals. In the Granite Cutters, since 1897 the national executive council has had power to decide whether work shall cease in all the yards of an employer pending settlement of a strike in any one yard.[3]

The unions in the building trades sometimes refuse to complete jobs that have been begun by non-unionists. Thus the executive board of the Bridge and Structural Iron Workers has decided that union members must not rivet material raised by "scabs" or place corrugated sheeting on structures erected by "unfair" firms.[4] Union bridgemen are not allowed to rivet material that has been put in place by "scabs," but they may make repairs on "unfairly" built structures. In the "working rules" for 1903–1905, agreed to by the Contracting Sewer Builders' Association of Cook County, Illinois, and by Local Union No. 21 of the Bricklayers and Masons, it was provided that union bricklayers were not to build "inverts, man-holes or catch basins" on a sewer which had been constructed by non-union labor.[5]

In at least one case a local union of the Painters forbade its members to paint walls that had formerly been painted

[1] Constitution, 1910, Standing Resolutions, No. 21.

[2] Thus, see Longshoremen, Report of Executive Council, 1903, p. 16. In 1904 the United Mine Workers defeated a resolution which provided that wage scales should not be signed with mine operators who were "unfair" in one State or district (Proceedings of the Fifteenth Annual Convention, 1904, p. 136).

[3] Constitution, 1897, Sec. 190.

[4] The Bridgeman's Magazine, July, 1907, p. 429.

[5] Joint Arbitration Agreement between the Sewer Contractors' Association and the United Order of American Bricklayers and Stone Masons' Union, No. 21 of the Bricklayers and Masons' International Union, April 1, 1903, to May 1, 1905, p. 62, Sec. 8.

by non-unionists.[1] While the national union of the Painters and of other building trades unions do all in their power to assist in making jobs union "from beginning to end," they do not approve of this policy, since its adoption would deprive union members of employment. In very few cases can a property owner or a contractor be forced to tear a building down and rebuild it in order to be in a position to hire union painters.[2] Consequently most of the unions in the building trades consider that it is usually the wisest policy to finish an "unfair" building. Here again, expediency is the key-note of union policy.[3]

The application of the closed-shop rule has been extended in still another direction by the refusal of certain unions to handle non-union material. The unions which are chiefly concerned with non-union material are those which have jurisdiction over establishments in which material is manufactured as well as over the shops in which this material is put into place or finished. The Amalgamated Carpenters, the United Brotherhood of Carpenters, and the Sheet Metal Workers, for example, include "inside men" or shop workers and "outside men" or structural building workers within their jurisdictions. The Sheet Metal Workers have advised their local unions to adopt by-laws forbidding the erection by union members of non-union metal work.[4] The locals have frequently refused to erect non-union-made pipe elbows, skylights, metal ceilings, and so on.[5] The Amalgamated

[1] Painters' Journal, November, 1892, p. 4.

[2] After a strike at Cleveland in 1905 the Sheet Metal Workers actually compelled property owners to tear out metal work put up by "scabs" and strike-breakers (Amalgamated Sheet Metal Workers' Journal, November, 1905, p. 423).

[3] At the convention of the State Building Trades Council of California in 1909 General-Counsel Cleveland L. Dam recommended when employers "deliberately embrace the open shop, then the closed shop, then the open shop again, upon their seeking thereafter to be considered 'fair,' that they be denied business intercourse with our organizations. Employers who have deliberately, wilfully and knowingly become 'unfair' should be given to understand that union labor will not do business with them" (Proceedings of the Eighth Annual Convention, 1909, p. 69).

[4] Amalgamated Sheet Metal Workers' Journal, August, 1904, p. 249.

[5] Ibid., March, 1903, p. 71; October, 1906, p. 383.

Carpenters impose a maximum fine of fourteen dollars on a member for "fixing, finishing or using work which has been made under unfair conditions, either in the United Kingdom or abroad, or contrary to the recognized rules of the district in which it has been prepared."[1] In the United States this rule has not been strictly enforced.

The United Brotherhood of Carpenters has been more active against non-union material than either the Sheet Metal Workers or the Amalgamated Carpenters. In the early years of its history there was much agitation against the use of "trim" and other mill-work manufactured in towns and cities where the rates of wages were low.[2] Since 1887 there has been increasing agitation against the use of all non-union mill-work. In the year mentioned the New York City Carpenters were urged not to "touch a piece" of the product of a Poughkeepsie mill owner who had persisted in running a non-union shop.[3] By 1897 the situation in New York had become critical. Mill owners in that city who ran union shops were required to pay such comparatively high wages that they could not successfully compete with non-union mills outside the city. Consequently, in order to save the New York mills to the union, the local unions of the Carpenters decided not to put up any non-union "trim" or to work on a job where it was used.[4] Many strikes were called. The movement against outside non-union trim finally assumed such importance that the executive board of the International union gave financial assistance to the New York district council.[5] As a result of this movement the Carpenters claim that many mills in the small towns about New York were unionized.[6]

In many other localities similar measures have been taken by local unions and district councils of the Carpenters.

[1] Rules in Operation January 1, 1905, Rule 48, Sec. 1. American Edition.
[2] The Carpenter, August, 1881, p. 2.
[3] Ibid., March, 1887, p. 1.
[4] Ibid., May, 1897, p. 1.
[5] Ibid., August, 1897, p. 9.
[6] Proceedings of the Tenth General Convention, 1898, p. 32.

More and more the officers of the union have come to believe "that the carpenter, in order to hold what rightfully belongs to him, must control the manufacture of the material" which he erects.[1] In 1904 the constitution of the national union was amended so as to provide that local organizations must promote the use of "trim and shop-made carpenter work" with the union label.[2] The chief value of the label to the Carpenters at the present time is that it affords a convenient and sure method for union carpenters at work on a building to determine whether "fair" material is being used.

In the stone-cutting trades it often happens that granite, marble, or soft stone is cut in the rough in a yard near the quarry, and then sold to the owners of other yards or shops where it is trimmed and finished. The Granite Cutters, as a rule, refuse to cut or trim work which has been purchased by an employer from the stock of an "unfair" or non-union firm. In their agreements it is frequently provided that no union member "shall be required to cut work taken from non-union firms nor to cut any part of a job if on another part of the same job (wherever it may be cut) non-union cutters are employed."[3] Similarly the Marble Workers will not set marble that has been cut by non-union men unless it comes from a place where there is no cutters' local. Marble that has been cut or rubbed by prison labor is unconditionally excluded.[4] The Granite Cutters also object to cutting granite in the rough which is to be shipped to non-union yards for completion.[5] At present, practical difficulties prevent much discrimination of this kind, since employers have adopted the plan of giving a number instead of a name to each job. In this way the name of the con-

[1] Proceedings of the Thirteenth General Convention, 1904, p. 38.
[2] The Carpenter, November, 1904, p. 4.
[3] Agreement governing Granite Cutting in Providence, R. I., 1905–1906, Clause 16. The trade is so well organized now that few cases of discrimination against non-union-cut granite have occurred during the past five years.
[4] Union marble setters in San Francisco in 1908 refused to set marble unless it bore the union label.
[5] The Granite Cutters' Journal, December, 1905, p. 7; October, 1906, p. 5.

signee is kept secret, and the union, accordingly, never knows on whose job its members are working.

In the steel industry one mill often makes billets and iron bars which are purchased by another mill for rolling. When their organization was strongest, the Iron, Steel and Tin Workers tried to prevent the handling in union mills of non-union bars and billets, but they refused to "stigmatize as 'blacksheep' any person or persons working iron made by 'blacksheep.'"[1] In 1888 they also rejected a resolution forbidding union mills to furnish material to non-union plants.[2] In one or two cases the Teamsters have refused to unload railway cars that had been loaded by non-union men in other cities.[3] This action was taken only after the local unions where the loading had been done had appealed to other local unions to strike against handling the cars.[4]

Finally, the question has been raised in some of the unions of the building trades whether union members should work for a "fair" contractor on a building whose owner has let another job to an "unfair" contractor. The national unions in these trades so far have not sanctioned the making of all jobs done for a property owner an extended closed shop. To call a strike against the "fair" contractor would result only in injuring him, since he has no means of compelling the property owner to unionize the other jobs.[5]

Several considerations have been influential in extending the closed-shop rule in the directions which have been indicated. In the first place, unions object to considering sub-

[1] Proceedings of the Thirteenth Annual Convention, 1888, p. 2499.
[2] Ibid., p. 2494.
[3] The Labor Compendium, June, 1905, p. 5.
[4] A proposition was offered in 1902 at the convention of the Meat Cutters and Butcher Workmen that union market cards, certifying an establishment to be a union shop, should not be placed in markets where "unfair meats" were sold. "After much discussion it was stated by the delegates that many packing houses were open houses and they deemed it unwise to adopt any such resolution." Accordingly it was defeated (Proceedings of the Fourth General Convention, 1902, p. 78). This union has jurisdiction both over retail meat markets and over packing houses where slaughtering is done.
[5] The Labor Compendium, April 3, 1904, p. 5.

contracts as separate "shops" because they fear that this would result in the splitting up of the work of the trade. If the general contractor were unrestricted in the employment of non-unionists as long as they were under separate subcontractors, he could very easily arrange so as to give them the work requiring less skill. At the same time he could keep union men in his direct employ to carry out the more difficult kinds of work for which skilled workmen are required.[1] The same consideration operates to lead the unions to refuse to complete the erection of buildings on which "scabs" or non-union men have been employed.

Secondly, it is regarded as necessary for the protection of the union label that all work done for an employer who uses the label should be done by unionists. The label is intended to indicate to consumers that the product on which it is displayed has been made under union conditions. If a manufacturer ran one of his shops as a union shop and another as a non-union shop, there would always be the chance that labels would be used on the goods made in the non-union shop. To prevent this would require a more efficient machinery for the administration of the label than the unions have yet devised. Moreover, consumers would be confused if part of the goods made by a firm were union and part non-union. In non-label-using unions which maintain a "fair list" the same difficulties would be encountered.

Thirdly, and more important than either of the foregoing, the extended closed shop serves as a lever to increase the strength of the unions. If an employer wishes one of his shops placed on the "fair list" or if he wishes to have the use of the label, the union takes advantage of this desire to force the unionizing of all. Even where the "fair list" or the label is not involved the extended closed shop may serve in the same way to strengthen the hold of the union on the trade. An employer in one place may be practically unable to run a non-union shop, while he may prefer to run another of his shops in another place as non-union. The

[1] The Carpenter, March, 1908, p. 20.

union may by enforcing the extended closed shop compel the unionizing of all his shops. Obviously, a variety of elements determine whether in any particular case a union can thus strengthen itself, since the employer may prefer to run all non-union shops rather than all union. It is for this reason that the extended closed shop is enforced with so little uniformity.

Similarly, the union by refusing to finish work begun by non-unionists, to erect or handle material made by non-union men, or to handle work which has passed through or which is going into the hands of non-unionists may transform non-union shops into union. The market for non-union material may be so restricted that its manufacture becomes unprofitable. The building which union men refuse to complete may prove a losing venture to the contractor. The proprietor of a non-union granite yard, finding that he cannot purchase stone from union yards, may be compelled to unionize his own yard.

The extended closed shop is also in some of its phases a reflection of the nationalizing tendency exhibited in every department of trade-union policy. The idea that the interests of all local unions are the same has been much promoted by the increasing power of the national unions. That strong local unions should aid weak ones is fundamental in the most highly developed American unions. In the building trades unions and in the Longshoremen[1] particularly the extended closed shop has proved to be perhaps "the strongest weapon of mutual protection" among the local unions.

[1] Commons, J. R., "Types of American Labor Unions: The Longshoremen of the Great Lakes," p. 70.

CHAPTER V.

The Joint Closed Shop.

It has been noted in the chapter on the simple closed shop that when a national union has jurisdiction over two or more branches or trades organized into separate local unions, it is usual to require local unions of one trade to assist local unions in the other trade to establish the closed shop. Very often, however, combinations have been formed among national unions and among local unions of different national unions for the purpose of securing mutual discrimination against non-union men. The group of shops thus covered in any particular case may be fittingly called, in the aggregate, a "joint closed shop." The joint closed shop is distinguished from the "extended closed shop" by the fact that the cooperation against the employment of non-union men is among national unions or among the branches of different national unions. The joint closed shop has been principally employed in certain well-defined groups of allied trades. These will be considered in the order of their importance.

The building trades.—In strong trade-union centers it has been increasingly difficult in recent years to get a union man of one trade to work with a non-unionist of any other trade on structural building work. In many cases discrimination against non-unionists has been extended even to unskilled building laborers. It has been comparatively easy to secure the cooperation of the unions in the building trades in establishing the joint closed shop because their members ordinarily work in intimate association with each other. Although jurisdictional disputes have hindered the development of amicable relations, there has been, on the whole, a greater sense of unity and a stronger spirit of fellowship

among the building trades unions than among any other group of unions.

Another factor in the success of the joint closed shop in the building trades has been that six or seven unions of approximately uniform strength and influence include the great mass of the workmen. These unions are the more willing to assist each other inasmuch as each of them incurs practically the same risks and secures practically equal benefits by joint action. The smaller unions have also usually been willing to assist to the extent of their power in any joint movement, but the greatest factor in the success of the joint closed shop among these unions has been the peculiar effectiveness of the sympathetic strike in the building trades. Since a building must be erected on a certain spot and within a fixed time, a strike even of a single union is a serious matter; but if a group of unions strike simultaneously to redress the grievance of one, the employer is placed at an enormously increased disadvantage.

It is impossible to ascertain with exactness the date at which the joint exclusion of non-union men from employment was first undertaken in the building trades. We do know, however, that soon after 1865 there came into existence a number of local "building trades leagues," whose object, in part, was to prevent the employment of "scabs" on buildings where union men of any trade were at work.[1] As was the case among the early trade societies, it will be noted that the first class of non-unionists discriminated against were "unfair" men.

Building trades leagues, or "councils," as they soon came to be called, increased in number so that by 1890 they had been established in New York, St. Louis, New Orleans, Augusta, Georgia, Richmond, Virginia, and other cities of importance. By each of these councils "scabs" were excluded from employment on work within the jurisdiction of affiliated unions. Moreover, in some of them after 1882 it was agreed that the "societies therein represented" use

[1] The Carpenter, May, 1881, p. 2.

their "united strength" to "compel non-unionists to conform to and obey the laws of the society that they shall properly belong to."[1] When a "trade society" had used "every lawful means to induce all non-union men to become members of their respective unions under the same rate of wages" and had failed, the council by vote of its "walking delegates" was authorized to "*order* the withdrawal of any or all *trades* or societies which may be on buildings where said non-union men may be employed." During the same period, that is, from 1882 to 1890, local building trades unions in cities where there were no councils occasionally entered into agreements "to call off all workmen on jobs where bosses hire scab labor" or non-unionists of either craft.[2] Most of the agreements of this character were made between local unions of the Carpenters and the Bricklayers and Masons[3] and between local unions of the Carpenters and the Painters.[4]

After 1890 a large number of new councils were established, all of which attempted to enforce the joint closed shop. In 1897, under the leadership of the St. Louis council, there was formed a national organization known as the "National Building Trades Council,"[5] which was designed to include all local building trades councils. One of the nine cardinal principles of the Council was the enforcement of the "working card system." The Council issued a working card which could not be obtained by a workman until he had procured a card in his own union. Business agents or "walking delegates" were expected to see that every man on a building carried the "building trades card." The Council did all in its power to secure the establishment in all cities of the joint closed shop. It frequently threatened to revoke

[1] Amalgamated Building Trades Council (New York), Constitution and By-Laws, 1885, Art. V, Sec. 1.
[2] Painters' Journal, February, 1891, p. 1.
[3] Bricklayers and Masons, Proceedings of the Twenty-first Annual Convention, 1887, p. 50.
[4] Painters' Journal, September, 1889, p. 1.
[5] Since 1904 known as the "International Building Trades Council."

the charter of a local council which refused to fine or expel affiliated unions declining to strike against non-unionists of an affiliated trade.[1] It also adopted a label to be placed on buildings erected entirely by union labor.

The Council was an association only of local unions, and conflicts with the national unions in the building trades were frequent. In 1904 a number of national building trades unions formed the "Structural Building Trades Alliance."[2] Subsequently, in 1908, this organization became the "Building Trades Department" of the American Federation of Labor. The Alliance established local councils and retained the "working card system" of the National Building Trades Council. At the present time the Building Trades Department expects the local councils, where practicable, to enforce the joint closed shop, but they are not required to do so. It does not encourage a joint strike against non-unionists unless there is a fair chance of success.[3]

In some cities the building trades councils have remained independent of all national organizations. These councils are, however, quite as much in favor of the joint closed shop as are the local councils affiliated with the Building Trades Department. Moreover, in many small cities where only two or three trades have been organized and it is not practicable to form a council, the unions have often concluded agreements among themselves to act together in excluding union men. It has happened that the allied unions have refused to work with non-unionists of a completely

[1] Proceedings of the Seventh Annual Convention, 1904, p. 66.

[2] For a more extended account of the history, structure, and functions of the National Building Trades Council and of the Structural Building Trades Alliance, see Kirk, "National Labor Federations in the United States," in Johns Hopkins University Studies in Historical and Political Science, Ser. XXIV, Nos. 9–10, pp. 79–115.

[3] The New York Building Trades Council (Rules, 1910, Sec. 37) provides that "wherever, or whenever, non-union men are found working, immediate action shall be taken by the business agents to enforce union conditions on all work; any trade connected failing to cooperate when notified of said conditions shall stand suspended, and can only be reinstated upon payment of one hundred dollars." New York has always been a stronghold of the building trades unions.

unorganized trade. This has frequently resulted in the formation of a union in that trade.[1]

Although the joint closed shop has been enthusiastically supported by the building trades unions affiliated with the American Federation of Labor, the Bricklayers and Masons have refused to enter into any alliance for this purpose. The International union permits its subordinate unions to join a building trades council, but it will not allow a council or any other "foreign combination" to fine or otherwise discipline bricklayers or masons.[2] Furthermore, if a subordinate union enters into a sympathetic strike for the purpose of assisting a union of another craft, it cannot obtain strike benefits from the funds of the International union,[3] which believes that its local organizations should owe allegiance to it alone and that they should not be embarrassed by entangling alliances.[4]

In Washington, D. C., in 1907 all of the building trades unions with the exception of the Bricklayers and Masons went out on strike to enforce the joint closed shop.[5] This failure to join in the strike proved serious to the other unions. The Bricklayers and Masons have pursued a similar policy in other strikes for the joint closed shop. The other unions in the building trades resent the "splendid isolation" of the Bricklayers, and building trades councils have on more than one occasion struck against union bricklayers and masons because they did not carry "building trades cards."[6] Pressure of this kind has induced some subordinate unions of the Bricklayers to join the councils and to make agreements for the joint closed shop with local unions

[1] The Carpenter, July, 1903, p. 1.

[2] Thirty-seventh Annual Report of President and Secretary, 1902, p. 157.

[3] Constitution, 1910, Art. XVII, Sec. 11.

[4] The other building trades unions assert that the Bricklayers and Masons have adopted this policy because they are the first to go to work on a building and can more completely "tie up" a job by striking than any other organization.

[5] Bricklayers and Masons, Forty-second Annual Report of the President and Secretary, 1907, p. 128.

[6] Ibid., Thirty-sixth Annual Report of the President and Secretary, 1901, p. 276.

of the Carpenters, Plasterers, Hod Carriers, and Stone Cutters. Both the National Building Trades Council and the Structural Building Trades Alliance have, however, been opposed to strikes against members of a non-affiliated union. They have argued that by assisting such unions local councils can better induce them to affiliate. In spite of the criticism of the other building trades, the Bricklayers and Masons show no signs of any change in their policy.

Certain unions which are not usually classed as building trades unions have, to some extent, been included in the joint closed shops of the building trades. In the large cities, Machinists' local unions, which have jurisdiction over the erection of engines and other machinery in buildings, are usually allowed to have representatives in the building trades councils. This privilege is not very valuable if the council is organized as a section of the Building Trades Department of the American Federation of Labor, since the policy of the Department is not to allow strikes in aid of a union which is not affiliated with the Department through its national union. By independent councils, like the Associated Building Trades of Chicago, the Machinists are given as much assistance in settling their grievances as are the Carpenters or Painters, and joint strikes are sometimes called against non-union machinists.[1] The Teamsters have also joined with the building trades unions in the maintenance of a joint closed shop.[2] In a number of cities agreements have been made that union teamsters shall not deliver material to buildings on which non-union men are at work, and also that union carpenters, bricklayers, structural iron workers, and so forth, shall not receive building material hauled by non-union teamsters.[3] In many places neither the unions of

[1] Machinists' Monthly Journal. February, 1908, p. 141.

[2] In 1901 the Musicians and the Theatrical Stage Employees sent circulars to the building trades unions of Colorado asking them not to work in the theatres of a certain manager because he had refused to recognize the two unions. No action on the request was reported (The International Musician, July, 1901, p. 5).

[3] The Team Drivers' Journal, October, 1902, p. 10; International Brotherhood of Teamsters, Proceedings of the Fifth Convention, 1907, p. 285.

the building trades nor the Teamsters wish to become involved in each others' disputes, but the adoption of some plan for joint discrimination against non-members seems to be growing in favor.[1] Assistance in the maintenance of the joint closed shop in the building trades is afforded by the Brewery Workmen. When the owner of a union brewery builds an addition to his plant or has repairs made, he is required to have such work done by union men. As the Brewery Workmen have substantial control of the brewing industry, they are able to enforce this rule.

The power of the joint closed shop has been frequently used to enforce the extended closed shop. The National Building Trades Council, through its general secretary-treasurer, on more than one occasion has expressed itself as opposed to allowing "fair" employers to sublet work to non-union firms. An agreement between a local council and employers allowing non-union subcontracting was declared to be "a peculiar guarantee," permissible only in lockouts "as a policy to keep the council and unions intact."[2] It was also one of the aims of the National Building Trades Council to compel an employer to be "fair" to the affiliated unions in all parts of the country. At the time of its organization in 1897 many building contractors no longer confined themselves to local operations but undertook work in many different sections. If one council became involved in a dispute with a contractor while he was carrying on work under the jurisdiction of another council, it was the policy of the national organization where practicable to force the contractor to grant union conditions in the former locality as the price of employing union men in the latter.[3]

It was made, for example, a subject of complaint at the convention of the State Building Trades Council of California in 1909 that the union carpenters of Salinas City were compelled to receive lumber and other material "from non-card-carrying drivers" (Proceedings, 1909, p. 96).

[2] Report of Proceedings of the Seventh Annual Convention, 1904, p. 70. See also The Labor Compendium, May, 1905, p. 7, for the New York arbitration agreement.

[3] The International Building Trades Council. Its Origin, Object and Benefits, p. 8.

The councils have also frequently supported one of their affiliated unions in its refusal to handle non-union material the manufacture of which was under its trade jurisdiction. As early as 1887 the building trades league at Augusta, Georgia, forbade affiliated unions to handle material made or even sold by a firm or company which did not "recognize fifty-eight hours as a week's work."[1] The leagues at this time also frequently refused to use convict-made materials.[2] At a somewhat later date they assisted the Carpenters in boycotting material from planing mills and sash factories where strikes were in progress.[3] When the National Building Trades Council was formed, the agitation against the use of non-union material increased greatly. Each local council was allowed to decide for itself whether it would handle non-union work, but the national organization frequently urged the local councils to discriminate against such material. As a matter of fact, most of the building material which was discriminated against was made by "unfair" firms. It was only rarely that material was boycotted simply on the ground that it was made by a non-union firm.[4]

The Structural Building Trades Alliance and its successor, the Building Trades Department of the American Federation of Labor, have continued the policy of the National Building Trades Council. The councils have not been forced to assist affiliated unions in excluding "unfair" material. Indeed, a council will not ordinarily take any action unless a complaint has been made by the union concerned. If the Carpenters, for instance, wish to have the output of a certain mill boycotted by a council, they must

[1] The Carpenter, October, 1887, p. 5.

[2] The Painter, December, 1887, p. 1.

[3] Bricklayers and Masons, Twenty-sixth Annual Report of President and Secretary, 1891, p. lxviii.

[4] In reply to a question as to what benefit it had derived from its connection with the National Building Trades Council, the Chicago Council answered: "The refusal of trades affiliated with the Building Trades Councils of Kansas City, Omaha and Detroit to handle marble manufactured in shops that were on strike in this city" (Report of Proceedings of the Third Annual Convention, 1900, p. 15).

petition for assistance.[1] Joint discrimination against non-union materials therefore is not nearly so widespread as that against non-union men.[2] It is very seldom that any union in the building trades refuses to work on non-union material the manufacture of which is within the jurisdiction of unions other than those of the building trades.

In spite of certain restrictions upon the calling of joint strikes, in 1903 so many were inaugurated that the National Building Trades Council was unable to finance all of them.[3] While no statistics are available to show how far these strikes were successful, it is noteworthy that there have been few notorious failures. The unions have been highly satisfied with the results, and employers have admitted that great gains have been made for the unions by such strikes.[4] In the near future the Building Trades Department of the American Federation of Labor aims to "establish a chain of building trades councils throughout the land which will compel the respect of employers and enforce discipline among workers."[5]

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[1] State Building Trades Council of California, Proceedings of the Eighth Annual Convention, 1909, pp. 161–162.

[2] The Bricklayers and Masons have occasionally made local agreements with the Granite Cutters and the Stone Cutters in which it is provided that the former shall not "build on or back up" any work where the stone is cut by "scabs," and that the latter shall not cut stone to be sent to jobs where non-union masons and bricklayers are at work.

[3] Report of Proceedings of the Sixth Annual Convention, 1903, p. 170.

[4] "It was agreed by both sides that the use of the sympathetic strike had been a powerful influence in unionizing the building trades of Chicago" (Report of the Industrial Commission, Vol. VIII, p. xxi).

[5] Amalgamated Sheet Metal Workers' Journal, December, 1908, p. 470. In December, 1910, one hundred and forty-three local councils and two state councils, comprising twenty-four county and city councils, were affiliated with the Department. The following national unions were also affiliated: The Asbestos Workers, the Bridge and Structural Iron Workers, the Amalgamated Carpenters and Joiners, the Cement Workers, the Electrical Workers, the Elevator Constructors, the Steam Engineers, the Granite Cutters, the Hod Carriers and Building Laborers, the Lathers, the Marble Workers, the Metal Workers, the Painters, the Plasterers, the Plumbers, the Composition Roofers, the Slate and Tile Roofers, the Stone Cutters, and the Tile Layers.

The metal trades.—In the metal trades the development of joint action against non-unionists has been much slower than in the building trades largely because there has been less opportunity for the advantageous use of joint and sympathetic strikes. A building must be constructed on a particular piece of ground, but metal work can be transferred from one shop to another and from one city to another. The unions of the metal trades for this reason have never shown enthusiasm over the possibilities of joint action. The indifference toward non-unionism in other allied trades might perhaps have been less if the Molders, who are far and away the strongest union in these trades, had not refused to take the lead in securing the joint closed shop. They, like the Bricklayers, believe that nothing is gained for themselves by interfering in behalf of the unions of allied trades. The other unions in the group, deprived of their natural leader, are practically powerless to effect combinations for the exclusion of non-union men.

A good illustration of the Molders' policy toward the other unions of the metal trades is afforded by a review of their relations with the Core Makers and the Pattern Makers. With the trades represented by these two unions the Molders come into intimate association in all foundries. In some cases non-union pattern makers and core makers were excluded from employment with union molders, but for a number of years the Core Makers attempted fruitlessly to obtain an agreement providing that no molder "be allowed to work with a non-union core maker, or vice-versa."[1] Finally in 1903 the Core Makers, at their request, were amalgamated with the Molders. The Pattern Makers and the Molders do not even yet discriminate jointly against non-unionists, except in isolated cases.

Probably the first union in the metal working trades in which it was proposed to resist the employment of non-unionists outside of its own trade jurisdiction was the Iron and Steel Roll Hands. In 1874 a plan was laid before the

[1] Molders, Proceedings of the Twenty-second Session, 1902, pp. 617–618.

convention of that union providing for an amalgamation with the United Sons of Vulcan and the National Union of Rollers, Roughers, Catchers and Hookers of the United States. To this resolution an amendment was offered that no union roll hands work with "black-sheep, either Puddlers or Heaters," and that if "either party be on strike our organization shall sustain them."[1] Partly as an evidence of the good-will of the Roll Hands, it was intended that this measure should go into operation before the amalgamation was consummated, but after lengthy discussion the amendment was lost.

The first joint action against non-unionists in the metal trades was against "scabs," and particularly against "strike-breakers." Thus in 1881 the Molders in a Pittsburgh foundry refused to work on patterns made by "scabs," after the union pattern makers in the employ of the concern had gone out on strike.[2] Similarly the Machinists at various times have refused to handle "scab-made" castings[3] and boilers[4] when a strike was in progress in the foundry or boiler-shop of the concern where their members were employed. Such action has usually been taken only after an appeal for help has been made by the union on strike. At the present time there is much indifference among the metal trades unions about working with "unfair" and blacklisted men, as long as the union concerned makes no protest.[5]

There has been even less joint action in these trades against working with ordinary non-unionists. Here and there two or three local unions have come to an understanding jointly to exclude all non-unionists, but no lasting combination has been effected. From 1897 to 1905 the Machinists, the Metal Mechanics, and the Metal Polishers

[1] Proceedings of the Second Annual Convention, 1874, p. 16. The unions having jurisdiction over the manufacture of iron and steel are seldom classed among the metal trades unions. They have never been on terms of intimate relation with other unions.

[2] Iron Molders' Journal, March, 1881, p. 8.

[3] Ibid., February, 1896, p. 69.

[4] Report of the Grand Master Machinist to the Seventh Convention, 1897, p. 5.

[5] Machinists' Monthly Journal, March, 1902, p. 143.

issued a joint label the use of which could be obtained only by those establishments which maintained closed shops as far as the three organizations were concerned.[1]

In 1908 the American Federation of Labor organized a "Metal Trades Department." At the outset the Department formed branches in about fifty important cities.[2] It aims ultimately to bring about the full cooperation of the affiliated unions on all matters of common concern. Although its published program contains no mention of joint discrimination against non-unionists, there is no doubt that the Department favors the establishment of the joint closed shop among the unions in the metal trades. In January, 1910, the Philadelphia branch was authorized to introduce the "card system" for three months,[3] but no strikes were called to enforce the carrying of union cards. It was thought that if unionists were all furnished with cards of the branch, the non-unionists could be distinguished and many of them might be induced to join the proper union. As the Philadelphia experiment has not been repeated, the presumption is that it did not prove a success. Since the formation of the Department, however, there is no doubt that the sentiment among the unions in favor of the joint closed shop has greatly increased, but the employers in some of the trades are strongly organized in open-shop associations, and the unions cannot hope for rapid progress.

Unions of the metal trades acting separately have also at certain times obtained the employment of unionists in the other trades. Thus the Blacksmiths in 1901 signed a closed-shop agreement at Ottumwa, Iowa, which provided that all employees not eligible as members of the Blacksmiths' union

[1] Spedden, p. 22.

[2] Affiliated with the Metal Trades Department in January, 1911, were the Sheet Metal Workers, the Blacksmiths, the Boilermakers and Iron Shipbuilders, the Electrical Workers, the Steam Engineers, the Steam Fitters, the Foundry Employees, the Machinists, the Metal Polishers, Buffers, Platers and Brass Workers, the Molders, the Pattern Makers, and the Stove Mounters.

[3] Letter from Secretary-Treasurer Berres to the writer, February 22, 1910.

should belong to some other bona-fide organization.[1] The metal trades unions have been supported at times by union teamsters, engineers, and stationary firemen, who have refused to work with "unfair" metal workers.[2] The Metal Polishers, the Steam Engineers, and the Stationary Firemen in 1903 proposed an agreement to the Kellogg Switchboard and Supply Company of Chicago in which it was provided that the company should employ "none but members of the aforesaid organizations or those who carry the regular working card of such organizations, provided the various crafts will furnish such competent help as may be required . . . within twenty-four hours after notification."[3] The Brewery Workmen insist that none but union machinists, boilermakers, and so forth, shall be employed in union breweries.[4] Finally, there is a more or less general understanding between the Machinists and the printing trades unions, particularly the Printing Pressmen, that non-union machinists shall not be allowed to set up machines in union offices.[5]

The printing trades.—At one time all of the printing trades were under the jurisdiction of the International Typographical Union. In the earlier years compositors, pressmen, and bookbinders were combined in the same local unions. About 1874 separate local unions of pressmen began to be chartered, and later on the same policy was followed with regard to bookbinders and stereotypers. Almost immediately after the first charter was issued to pressmen the president of the International union recommended that printers' and pressmen's locals be required to cooperate with each other in matters of common interest.[6] In 1875 a resolution was adopted providing that when a non-union

[1] Blacksmiths' Journal, April, 1901, pp. 7–8.
[2] Machinists' Monthly Journal, March, 1903, p. 211.
[3] Christensen v. The People, 114 Ill. App., 40.
[4] Brewery Workmen, Proceedings of the Seventeenth Convention, 1908, p. 160.
[5] Machinists' Monthly Journal, February, 1903, p. 115.
[6] Report of Proceedings of the Twenty-second Annual Session, 1874, p. 13.

man, whether pressman or compositor, was employed in an office, "it shall be obligatory on the part of all union men to cease work in said office unless they have the consent of both unions to continue."[1] In the following year this rule was rescinded.[2] In 1879 all union men were required to cease work with a non-unionist, pressman, or printer, "when so ordered by their unions."[3] Finally, in 1891, resolutions were passed urging printers to do their utmost "to unionize all the other departments of offices under their control."[4]

In spite of the fact that the International union thus gave its sanction to the establishment of the closed shop in all branches of the trade, the local unions very rarely acted together. Time and again the national officers, particularly the heads of the allied crafts,[5] called attention to the lack of joint action. The weaker unions continually urged that no office be considered "fair" unless it was "fair from cellar to garret," but their demands were generally ignored.

The pressmen seceded from the International Typographical Union in 1889. They were followed by the bookbinders in 1892, but it was not until 1895 that the Printers gave up their claims of jurisdiction over the seceding trades. In that year an agreement known as the "Tri-Partite Agreement" was entered into between the Printers, the Printing Pressmen, and the Bookbinders. The only section in the agreement directly affecting the joint closed shop, other than that regulating the use of the label, provided that subordinate unions of the Printers should "use all honorable endeavors to induce non-union pressmen and bookbinders within their jurisdiction to affiliate with the nearest union

[1] Report of Proceedings of the Twenty-third Annual Session, 1875, p. 62.
[2] Report of Proceedings of the Twenty-fourth Annual Session, 1876, p. 62.
[3] Report of Proceedings of the Twenty-seventh Annual Session, 1879, pp. 34, 42–43.
[4] Report of Proceedings of the Thirty-ninth Annual Session, 1891, p. 112.
[5] The subordinate crafts each had a vice-president to represent them on the executive board of the International union.

of their respective organizations."[1] The agreement remained in force until 1901, when it was finally abrogated. Under it practically no progress was made in establishing joint closed shops.[2]

In 1904 a new agreement was made by the Printers, the Printing Pressmen, the Bookbinders, the Stereotypers, and the Photo-Engravers under which a "National Allied Printing Trades Council" was established.[3] This agreement, with certain amendments, is still in force. No reference is made therein to cooperative action against the employment of non-unionists in the different trades, but an allied trades label was adopted, to be issued to printing offices by local "allied printing trades councils" when "unanimous consent of the unions represented" had been obtained.[4] Care has been taken that the joint label is not used except in accordance with this provision,[5] but strikes have seldom been called by one trade to compel an employer to unionize another department of his office.

In a few cities, however, vigorous joint campaigns have been carried on against "rats" and other non-unionists.[6] Both the Printing Pressmen and the Stereotypers have refused to handle "strike-bound" composition. During the eight-hour strike of the Printers in 1905–1907 the Stereotypers in New York, Chicago, Cincinnati, Minneapolis, Richmond, Virginia, and other cities went out on prolonged strikes because they were asked to handle non-union matter.[7]

[1] Bookbinders, Official Proceedings of the Fourth Annual Convention, 1895. p. 49.

[2] The International Bookbinder, April, 1901, p. 6.

[3] The Stereotypers and the Photo-Engravers in the meantime had also seceded from the Typographical Union. Prior to 1904 the Stereotypers had an agreement with the Printers requiring the latter's local unions to insist upon union-made stereotype plate matter, electrotype plates, and papier-maché matrices.

[4] Spedden, pp. 84–86.

[5] Where the labels of the individual unions are still used they are not ordinarily given to an office where non-union men of any trade are employed. The Printing Pressmen complain that the Typographical Union often violates this rule.

[6] The American Pressman, December, 1902, p. 27; December, 1908, p. 14.

[7] Stereotypers and Electrotypers' Journal, August, 1907, p. 4.

Had it not been that the Stereotypers themselves wished to secure the eight-hour day, it is not likely that they would have interested themselves in opposing the employment of non-union printers. It is noteworthy that when the long Cincinnati strike was at its height, Vice-President Frey in his report on the situation argued in favor of refusing to handle "strike-bound" composition, but declared that for the Stereotypers to object to all non-union work was something which neither Printers nor Stereotypers had ever proposed. Many composing rooms in Cincinnati had always been non-union, although the stereotyping and electrotyping departments in the same offices employed only union men.[1]

The chief hindrance to the wider enforcement of the joint closed shop in the printing trades has been the stand taken by the International Typographical Union. This organization has always maintained that as a printers' union it is primarily for the benefit of printers, and that it should not be used as a "club" to unionize the workmen of other trades. As has been shown above, this feeling prevailed even when the trade jurisdiction of the union extended over all the printing trades. Since the agreement of 1904 the progress of the joint closed shop has been retarded by the continual struggle of the four weaker unions to gain control over the joint conference board. Even the Printers have expressed the belief that the allied trades "should rid themselves of the merited reproach begotten of union pressmen and bookbinders working with non-union compositors and vice-versa."[2] It is acknowledged that "too often the Allied Printing Trades Council is considered a farce or joke."[3]

The glass trades.—No federation of unions has ever been

[1] Stereotypers and Electrotypers' Journal, August 1906, p. 15.

[2] The Typographical Journal, July, 1897, p. 14.

[3] Stereotypers and Electrotypers' Journal, May, 1907, p. 15. In 1904 the New York State convention of the Allied Printing Trades Councils declared itself "strongly opposed to the 'open shop' in any department of our allied trades, whether it be in national, state, municipal government, or private corporation or firm" (The International Bookbinder, September, 1904, p. 170). The secretary of the joint conference board estimates that there are now about seven thousand printing offices using the allied trades label.

formed in the glass industry. Accordingly the joint closed shop has been developed only as a part of the policy of individual unions. In 1902, after having rejected a similar proposition the year previous, the Glass Bottle Blowers adopted a resolution providing that its members should refuse to blow for non-union stopper grinders, a trade then under the jurisdiction of the Flint Glass Workers.[1] This action was apparently taken at the solicitation of the latter union.[2] Soon afterwards, in 1905, the Blowers extended their jurisdiction over stopper grinders and forced them to change their affiliation.[3]

For many years the Glass Bottle Blowers in most shops required mold makers working in union bottle factories to belong to the Flint Glass Workers,[4] but they refused to sign an agreement to make this a rule for all shops on the ground that there were often not enough union mold makers to fill the needs of "fair" manufacturers.[5] As a result of a jurisdictional dispute of long standing, the Flint Glass Workers in the fall of 1909 called out on strike all mold makers in union bottle factories at Alton, Illinois. The Glass Bottle Blowers then permitted the employment of machinists as mold makers. This policy proved successful, and the Blowers determined to drive out entirely the mold makers who were affiliated with the Flints. This was rapidly accomplished, and mold makers employed in shops under the jurisdiction of the Blowers are now required to be members of the International Association of Machinists. For a number of years prior to 1899 there was an organization among the sidelever pressers in glass bottle factories called the Green Glass Pressers' League. The Glass Bottle Blowers usually required pressers and pressers' gathering boys in union fac-

[1] Proceedings of the Twenty-sixth Annual Session, 1902, p. 120.
[2] Flint Glass Workers, Proceedings of the Twenty-fourth Annual Convention, 1902, p. 186.
[3] Proceedings of the Twenty-ninth Annual Session, 1905, p. 139.
[4] Flint Glass Workers, Proceedings of the Fifteenth Annual Convention, 1892, p. 179.
[5] Glass Bottle Blowers, Proceedings of the Twenty-sixth Annual Session, 1903, p. 29.

tories to belong to the League. Since 1899 the pressers have been required to join the local unions of Blowers.[1]

Waterfront and marine trades.—In New York City and vicinity there has been in existence for a number of years a federation known as the "Marine Trades Council." It is composed of unions which have jurisdiction over the construction and repair of steam and sailing vessels. In some cases it has called joint strikes against the employment of non-union men in one of the affiliated trades. In San Francisco there is a much older organization of similar character known as the "City Front Federation." It admits to membership all local unions "whose members are directly employed in the construction or repair of docks and vessels, the handling and hauling of cargoes, and the handling of vessels, steam or sail."[2] Provision is made for joint strikes, and some strikes have been called against the employment of non-union men in one of the affiliated unions. In New Orleans the "Dock and Cotton Council" has contrived to enforce the exclusive employment of union men in handling all freight from the time it reaches the city until it is placed on board ship.[3] The Teamsters, the Freight Handlers, and the Longshoremen are the unions chiefly interested in the council.

The Seamen and the Longshoremen have not joined in the enforcement of the closed shop as fully as might have been expected from their intimate relations, but some local unions of Longshoremen on the Great Lakes have forbidden their members to work with non-union sailors or to unload

[1] The Flint Glass Workers have often accused the Glass Bottle Blowers of bad faith. In 1901 their president said: "It is only a few years since pressers, gatherers, stopper grinders and mould makers were permitted to work in green houses without regard to their being affiliated with any union. . . . If by refusal to accept lower wages they were compelled to leave the employ of any company, non-union men might take their places and the Glass Bottle Blowers Association would not interfere. . . . All of a sudden the Green Association has discovered a great interest in pressers, gatherers, mould makers and stopper grinders, particularly pressers and gatherers" (Proceedings of the Twenty-third Annual Convention, 1901, p. 60).

[2] Constitution, 1908, Art. II, Sec. 3.

[3] Facts, February, 1911, pp. 12–13.

vessels manned by them.[1] In 1901 it was recommended by a committee of the Longshoremen that marine firemen and oilers, who were under the jurisdiction of the Longshoremen, should see that wheelmen and watchmen were members of the Seamen's union,[2] but no action was taken on the recommendation. In 1903 a resolution was adopted authorizing local unions of the Longshoremen to refuse to work with non-union crews on vessels whose owners were not members of the Lumber Carriers' Association.[3] When the open-shop campaign of the Lake Carriers' Association was inaugurated in 1909, there was bad feeling between the Longshoremen and the Seamen, consequently when the Seamen were locked out, the Longshoremen did not refuse to unload vessels manned by "scab" sailors.[4] Soon afterwards they themselves were also locked out. Changes in the official personnel of the Longshoremen which occurred at this time and the common danger threatening the two unions were responsible for the establishment of closer relations. It is not unlikely that in the near future the Seamen and the Longshoremen "will be cemented together by mutual protective working agreements."[5]

The Marine Engineers, the International Pilots' Association, and the American Association of Masters, Mates and Pilots are organizations of marine officers. The International Pilots' Association has a rule that, except with the consent of the executive council, no member shall employ for service on any steam or sail vessel seamen who are not members of a seamen's union affiliated with the American Federation of Labor.[6] The American Association of Mas-

[1] Longshoremen, Proceedings of the Tenth Annual Convention, 1901, p. 35.
[2] Ibid., p. 150.
[3] Proceedings of the Twelfth Annual Convention, 1903, p. 196. The Longshoremen have always preferred to deal with employers' associations. Hence the tactics of the union in this case were undoubtedly designed as much to force vessel owners into the Lumber Carriers' Association as to exclude non-union men from employment.
[4] The Buffalo Express, April 14, 1909, p. 1.
[5] The Longshoreman, December, 1909, p. 3.
[6] Constitution, n. d., Art. XVI, Sec. 1.

ters, Mates and Pilots, on the other hand, refuses to aid in the organization of seamen. It does not even demand the closed shop for its own members. The Marine Engineers occupy middle ground. In 1909 the Lake Carriers' Association adopted an official form of contract to be signed by individual engineers in which the following provision appeared: "It is understood that all departments of this ship will hereafter be conducted in each department upon the *open shop* principle, and your cooperation will be required in carrying out this principle." The Marine Engineers refused to let their members sign this contract, partly on the ground that it was improper for them to aid in forcing the open shop on the Seamen and Longshoremen, but they were willing to agree not to cooperate with these unions in securing the joint closed shop.

The wall paper trades.—The two unions composing the "Allied Wall Paper Trades," namely, the Print Cutters and the Machine Printers and Color Mixers, have maintained joint closed shops since 1903. Even when the cutting and the printing are done in separate establishments the Machine Printers will not handle non-union "prints," nor will the Print Cutters cut patterns for non-union printing houses. In Canada, where the Machine Printers have no local unions, non-union printers are allowed to work with union cutters.

The remaining cases of enforcement of the joint closed shop relate to specific unions.[1]

The United Mine Workers.—Prior to 1907 there were associations of mine managers and their assistants in the Illinois and Indiana coal fields. Many of the members of these organizations had been miners and had formerly belonged to the United Mine Workers, consequently they were for the most part friendly to the union. Their friendship was very valuable to the union, and some of the Mine Workers'

[1] In 1908 the American Federation of Labor established a "Railway Employes' Department" with which all unions in the Federation having jurisdiction over railway work are affiliated. Up to the present the attention of the Department has been given chiefly to the settlement of jurisdictional disputes. No attempt has been made to enforce the joint closed shop.

local unions instructed their pit committees to see that managers and their assistants on "card day" were in good standing in the managers' association.[1] In 1900 a resolution was offered at the Mine Workers' convention which provided that "all employees in or about the coal mines must either be members of the United Mine Workers of America or members of their respective trade unions," and that "the pit committees in the different mines have jurisdiction over all such employees belonging to other unions than the United Mine Workers of America."[2] The resolution was rejected.

American Federation of Musicians.—In some cities the Musicians have an understanding with the Hotel and Restaurant Employees that members of neither union shall work in hotels, cafés, and restaurants "unless all of the trades are recognized." The local unions of the Musicians have also frequently made arrangements with the Theatrical Stage Employees for the joint exclusion of non-unionists from employment in theatres and moving-picture parlors. In 1905 the Theatrical Stage Employees asked for a national agreement, but the Musicians considered that the matter had better be left for local unions to determine.[3] Because they are more self-reliant than most of the other unions with which they work the Musicians have frequently been accused of caring little for the interests of the other trades.[4]

The Teamsters.—In addition to their affiliations with the unions of the building and metal trades, noted above, the Teamsters have also joined with the Bakery and Confectionery Workers in maintaining closed shops. In 1902, for example, the Detroit local union of bakers struck in certain bakeries because the proprietors refused to agree to employ

[1] Illinois Mine Managers and Mine Examiners' Mutual Aid Association, Proceedings of the Fourth Annual Convention, 1901, p. 6.

[2] Proceedings of the Eleventh Annual Convention, 1900, p. 47.

[3] Theatrical Stage Employees, Proceedings of the Thirteenth Annual Convention, 1905, pp. 58–59.

[4] In 1903 the Musicians voted to "enter into reciprocal relations," whenever possible, with the Actors' Protective Union of America. They have not, however, discriminated against non-union actors (Proceedings of the Eighth Annual Convention, 1903, p. 110).

union drivers. The union drivers joined in the strike.[1] There are only a few industries, however, in which community of interest between the drivers and the men in the shops is strongly felt.[2]

Miscellaneous.—The Granite Cutters for a brief period had an agreement with the Quarrymen in which it was provided that members of neither organization should work with non-unionists in the other trade. The arrangement proved unsatisfactory to the Granite Cutters and was discontinued.

The Shirt, Waist and Laundry Workers and the Meat Cutters and Butcher Workmen[3] have secured the insertion in some agreements with employers of a provision that all employees must become members of the unions in their respective crafts. It is seldom that "blanket" agreements of this character are formed. The Shirt, Waist and Laundry Workers have required as a condition for the use of their label that all firemen and engineers employed in a factory or laundry must be members of the Stationary Firemen and the Steam Engineers respectively. If there is no local union of these organizations in the city, the firemen and engineers must join the Shirt, Waist and Laundry Workers.[4]

In 1906 it was proposed at the convention of the Boot and Shoe Workers to adopt a rule that "all employees in union stamp factories shall be members of their respective unions," and that union boot and shoe workers should not "be compelled to work on any product that is declared unfair by the American Federation of Labor."[5] The resolution was defeated as being inexpedient.

There have been numerous occasions in all parts of the country in which local unions have combined temporarily or permanently for the purpose of securing the exclusive employment of their members. In Philadelphia, for instance,

[1] The Team Drivers' Journal, May, 1902, p. 8.
[2] The brewery drivers employed by union breweries are required to be members of the Brewery Workmen.
[3] Official Journal, February, 1901, p. 5.
[4] Spedden, p. 88.
[5] Proceedings of the Seventh Convention, 1906, p. 172.

the members of the two local unions of lace menders and lace finishers will not work for factories which employ non-union lace operatives. In 1904 the stationary engineers, firemen, rock drillers, tool sharpeners, caisson workers, and dock builders engaged on the Pennsylvania Railroad tunnel at New York struck jointly against the employment of non-unionists.[1]

It will be seen from the foregoing that the joint closed shop has been most successfully established in those trade groups where the joint or the sympathetic strike is most effective. It has attracted little attention from those unions which work in contact with only one or two others. In the case of unions like the Barbers and the Horseshoers, which do not come in contact with unions of other trades, and in the case of the open-shop organizations, like the Locomotive Engineers, there has been no discussion whatever concerning the joint closed shop. A large number of groups of unions, on the other hand, seem to afford the necessary conditions for the success of the joint closed shop. Jurisdictional disputes, like that between the Glass Bottle Blowers and the Flint Glass Workers, have greatly hindered the development of joint movements against non-union men.

The enforcement of the joint closed shop is usually based on the principle of reciprocity.[2] The advantage of such an arrangement, especially if the unions are of approximately the same strength, is obvious.[3] If one union makes a sacrifice in striking for another union, at another time or place it receives aid. Moreover, the united power of the unions is enormously greater than the power of any one of them. One reason why a more vigorous joint campaign has not been carried on against non-union material is that there is in

[1] The Labor Compendium, July 31, 1904, p. 8.

[2] The Carpenter, May, 1881, p. 2.

[3] "Councils of related trades . . . have a plain economic basis, in that they represent men who work for the same employers, or for employers who cooperate in the same industry. Their technical and industrial relations give them strength in united action. The sympathetic strike, as it develops under their influence, is a formidable weapon" (Final Report of the Industrial Commission, 1902, p. 799).

most cases little opportunity for the unions having jurisdiction over the manufacture of material to assist the unions which handle it. The Bricklayers and Masons may discriminate against non-union bricks, but it is impossible for the Brick, Tile, and Terra Cotta Workers to prevent the owner of a brick-yard from selling to non-union contractors.

Certain unions have discriminated against non-unionists of other trades not so much to get help of the same kind as to secure other forms of assistance. The Brewery Workmen, for example, require the employment of union carpenters, bricklayers, and so forth, in erecting buildings at union breweries, although the other unions are unable to insist directly on the employment of union brewery workers. The brewery workers make no complaint if unionists in the building trades work for one of the few non-union breweries. The Brewery Workers aim merely at increasing the general obligations of other trade unions to them. Much of the enthusiasm manifested by trades councils and city federations against local option and prohibition seems to be inspired by the fact that the Brewery Workmen have always been extremely loyal to other unions. No union has made more effective use of the boycott than the Brewery Workmen.

The enforcement of the joint closed shop does not rest simply on advantages to be gained, but also on the principle widely accepted among unionists that it is "lowering and degrading" to work with non-union men. Many unionists analyze such action by characterizing it as not only "incongruous" but "weakening." It is incongruous because each union insists on the closed shop within its own jurisdiction, and it is weakening because the opportunity to assist another union and thereby gain its good will is lost.[1]

American trade unions fully realize the advantage of the joint closed shop, and it is evident that they are likely to make fuller use of it in the future. For years the American

[1] "When you work on the same job where non-union men are employed, you are aiding and encouraging the cause of the open shop, rendering weaker the whole structure of union labor, and in effect cutting your own throat" (Amalgamated Sheet Metal Workers' Journal, November, 1908, p. 434).

Federation of Labor has been striving to bring about alliances among the national unions. At present the Federation seems to have in view the formation of "departments" in every group of allied trades affiliated with it. By doing this the machinery is provided for more vigorous and more extensive discrimination against the non-union man.

CHAPTER VI.

The Establishment of the Closed Shop.

Trade unions follow two methods in organizing the workmen under their jurisdiction. Journeymen may be approached as individuals without regard to the shop in which they are employed, or attention may be concentrated on the workmen employed in a particular shop. The first method is employed in organizing the workmen in cities where a union is weak. The second method is the one chiefly employed by unions in which the closed shop is well established. The extension of the union's influence is not accomplished by organizing individuals but by unionizing shops.

There are, of course, no hard and fast rules determining the way in which a local union, a district council, or a national union shall proceed in order to secure the exclusive employment of its members in a shop. Expediency is here the only practicable test of union policy, although precedent exercises some influence. The initiative in unionizing a shop, obviously, must come from one of two sources. Either a trade union takes it upon itself to see that the shop is unionized, or the employer on his own initiative requires his workmen to join the union. In the great majority of cases it is the union that acts, since it is the party chiefly interested in the extension of its control.

The simplest plan by which American trade unions secure the closed shop in an establishment is to induce the men in a shop or factory one by one to join the union until all, or practically all, have become members. During the period of unionizing no demands are made upon the employer that he discharge non-union men, nor are such demands made after the shop is organized. At first a few non-union men may be allowed to remain at work. As time goes on, established custom is likely to make the shop a completely closed

one. As the union men come to have an overwhelming majority, "moral pressure" can usually be effectively applied to secure the membership of the remaining non-union men.[1] "Moral pressure" varies from persuasion to intimidation.

The shop having thus been unionized, if the employer has never shown unfriendliness to labor organizations, the union soon comes to feel that it is securely intrenched. When new workmen are employed, there is no hesitation about asking them if they have union cards. If they prove to be non-unionists, they are told they must join the union. It is well known to them, of course, that for a considerable time the union has had practical control over the shop, although the employer has not entered into a closed-shop agreement with it. Ordinarily they apply for membership. Should they refuse to become union members, their work would probably be made very unpleasant. Not only would the unionists do all in their power to annoy such "independents," but if the foreman happened to be a union member, some pretext would usually be found for their discharge.

While all the closed-shop unions at some time or other have unionized shops in this manner, the Molders furnish the best illustration of the working of this plan. In 1891 the Molders signed the first of a series of agreements with the Stove Founders' National Defence Association. Nothing was said in these agreements concerning the employment of union men. At the time the first agreement was signed sixty per cent. of the members of the Defence Association were operating open shops, but the union soon unionized the shops so effectively that in 1906 all but two of the foundries covered by the agreements were union shops. This result was accomplished "rather by inducing the Molders to enter the union, than by bringing pressure to bear upon the employer to discharge non-union men, or to force them to join the union."[2]

[1] Iron Molders' Journal, August, 1880, p. 19.

[2] Hilbert, F. W., "Trade-Union Agreements in the Iron Molders' Union," in Studies in American Trade Unionism, edited by Hollander and Barnett, p. 243.

In the early nineties the United Green Glass Workers[1] were unable to secure an agreement for the closed shop with a number of manufacturers. As business was then very dull, it was decided to allow union members to work for these firms as long as union wages and hours were observed. It was hoped that the non-union workmen could be induced to become members "in a short time," and that the union's control would be made "absolute." The plan was adopted, however, only after the bitterest opposition. Even its defenders admitted that it was "of necessity a slow method of gaining control."[2]

A number of small unions like the Compressed Air Workers and the Cotton Mule Spinners, which deem it wise not to adopt more radical policies, make it the duty of their members "to try by all means to get employment for union members"[3] and to induce non-members with whom they are working to take out union cards.[4] Similar rules were adopted by the Longshoremen, the Potters, and the Iron, Steel and Tin Workers soon after their organization, and they are still in force,[5] although these unions now also use other and more radical means of unionizing the shops in which their members work. Open-shop labor organizations also in this manner sometimes completely unionize a shop or a railroad. They may secure the membership of all the men at work for an employer, and yet not establish the closed shop. But most of the strong closed-shop unions have abandoned the plan of trying to secure the closed shop by gradually bringing into membership the workmen in a shop, and then relying on established custom to give them control. This method is considered too slow and uncertain. Moreover, to many unions it seems to give official sanction to the open shop if they allow their members to

[1] Known since 1895 as the Glass Bottle Blowers' Association of the United States and Canada.

[2] Proceedings of the Eighteenth Annual Session, 1894, p. 21.

[3] Card and Picker Room Protective Association of Fall River and Vicinity, Rules, 1908, p. 26.

[4] Compressed Air Workers, Constitution, 1902, Art. VI.

[5] See p. 29.

work for any length of time with non-unionists.[1] The method ordinarily employed of unionizing a shop is to bring into membership as many of the men as possible, and then to demand of the employer that he recognize the union and agree thereafter to employ only union members. Should the employer refuse, a strike is ordinarily called in his shop.

This method of unionizing a shop has been favored by leading unionists for many years.[2] After the union has "coaxed the non-unionists long enough,"[3] it is better in their opinion to bring the matter to a conclusion than to allow unionists and non-unionists to work together indefinitely. Conservative unions do not like to call such strikes until every effort has been made to bring the men into membership,[4] but frequently trade conditions make it advisable to strike for the closed shop rather than to wait until every non-union man in the shop has been induced to join. Greater care is taken in calling strikes for the closed shop against

[1] Bricklayers and Masons, Thirty-second Annual Report of President and Secretary, 1897, p. 85.

[2] "The first thing the union must do is to open the shop to union men. Then, at the first opportunity to get in the shop, grasp it and try to get as many union men in that shop as possible, until they have the majority. Then ask and request the non-union men, politely, to join their ranks. If they refuse to join (which rarely happens), you will strike on them. The boss very seldom lets the majority quit, and would discharge the non-union men. The non-union men, seeing themselves out of work and being run out by union men, will naturally but timidly come one by one and ask for admission to the union" (The Cigar Makers' Journal, April, 1892, p. 7). In 1880 a writer in the Iron Molders' Journal urged that strikes should be called at once against non-union men when they were in a minority in a shop, but conceded that "where they compose about one-half the shop's crew, a great deal of moral suasion should first be resorted to" (Iron Molders' Journal, May, 1880, p. 4).

[3] The Carpenter, August, 1883, p. 1.

[4] "Many employers who are willing to have their shops unionized are not willing to appear to be forced into such a position, and many workmen can be persuaded who cannot be compelled to become unionists. No demand should be made for the unionization of a shop until all reasonable efforts have been made to secure the allegiance of every employee. It is unwise, moreover, to demand the unionizing of a shop or an industry where there is not sufficient strength to compel it. For every such demand and prior to every such demand there should be months of patient propaganda, *and in this, as in every other line of trade policy, compulsion should not be used until persuasion has completely and signally failed*" (Mitchell, Organized Labor, p. 284).

large employers than against smaller ones. Thus in 1893 Subordinate Union No. 4 of the Bricklayers and Masons at St. Catherines, Ontario, asked permission to work with non-union men on a job until it could secure a majority, when it was willing to strike for the closed shop. The executive board of the national union, in passing upon the petition, ruled that it was "illegal" for members of any subordinate union to "work with non-union men inside of their legal jurisdiction,"[1] although in 1891 the board had acted favorably upon a similar petition from the subordinate union at South Oil City, Pennsylvania. Here the employer whose shop it was hoped to unionize after organizing a majority of its employees was the Standard Oil Company. The subordinate union was strictly enjoined to "use good judgment" and "not to estrange" the "good will" of the company.[2]

No closed-shop union allows members on their own initiative to go to work in "unfair" or "scab" shops. The unions will not admit the plea that the member entered such employment in order to unionize the shop. A member who violates this rule is "scabbed." Moreover, most unions do not allow their members on their own initiative to go to work in an ordinary non-union shop. As early as 1874 the Molders provided that local unions should not permit their members to work in "scab or non-union shops" unless there were "positive hopes of reclaiming such shops."[3] This regulation was highly commended by the editor of the Iron Molders' Journal. "Years of experience," he declared, "must have convinced all that no shop can be regained simply by allowing union men to work therein. . . . The idea of opening shops to get union men in and eventually making it a union shop is 'played out'; it has never been done, but simply because the class of men who could regain

[1] Twenty-eighth Annual Report of the President and Secretary, 1893, p. 13.
[2] Twenty-sixth Annual Report of the President and Secretary, 1891, p. lxxxii.
[3] Iron Molders' Journal, October, 1874, p. 69.

the shop, will not go into it."[1] In practically all of the closed-shop unions which have their trades well organized, union members must secure the consent of their union before going to work in any shop other than a closed one. In poorly organized trades where the open shop largely prevails such consent is rarely required.

In some cases the national unions have themselves specified in what open or non-union shops union men shall be allowed to work and when strikes shall be called for the closed shop. Thus, the Amalgamated Association of Iron, Steel and Tin Workers for many years "opened" non-union mills. Union men were from time to time encouraged to obtain work in such mills in order gradually to work out the "blacksheep" or non-union men. The mills were not allowed to remain "open" indefinitely if the attempt to unionize them failed. After a certain period the union men were called out, and the mills reverted to the "blacksheep."[2] In 1904 the Association provided that not more than three mills should be "opened" at one time,[3] and that union members sent into them should be allowed only ninety days in which to unionize them.[4] A union member sent into a mill which had been "opened" was regarded as a union missionary. If he was lax in seizing opportunities to induce non-unionists to become members, he was condemned as one who had betrayed a trust.[5] In former years many mills were unionized by this method, but since the decline in the power of the Amalgamated Association practically all aggressive tactics have been dropped.[6]

[1] Iron Molders' Journal, October, 1874, p. 69.
[2] Proceedings of the Twenty-fifth Annual Convention, 1900, p. 5727.
[3] Proceedings of the Twenty-ninth Annual Convention, 1904, p. 7099.
[4] Proceedings of the Twenty-ninth Annual Convention, 1904, p. 6879.
[5] Proceedings of the Eleventh Annual Convention, 1886, pp, 1839–1840.
[6] Some unions lay more stress on a written agreement for the closed shop than others. In practice it makes little difference whether an agreement is signed. As soon as the employer, either expressly or tacitly, recognizes the right of union members to exclusive employment, the closed shop has been secured. A union

In many shops the unions are greatly embarrassed in organizing the men by the hostility of the employer toward organized labor. Thus the employer will not hire union men to do any work. If by chance union men do get into his employ and the fact is discovered, they are discharged. Very often it is essential to a union to gain control over anti-union shops when they are of sufficient importance to prevent effective control over the trade if left unorganized. Unions are also eager to unionize such establishments because prestige is thereby given the union to a far greater extent than would be the case if a friendly shop of the same importance were unionized. Occasionally when an employer announces that he intends to run an anti-union shop, the unions address an appeal to his employees asking them to leave his service. This rarely succeeds in its object. Even if it does, unless non-union men are scarce, only temporary concern is caused the employer. A boycott may also be instituted to destroy the "unfair" employer's business. If these methods fail or if they do not appeal to a union as likely to be effective, the plan usually adopted, if the shop is to be unionized, is to allow union members to work there "under cover," that is, without the employer's knowing that they are unionists.

When a union man works "under cover," he does so with the express permission of his organization. Very often when he applies for employment at an anti-union shop he gives an assumed name, or if he gives his real name, it is frequently after his name has been erased from the regular union roster and placed upon a "secret list."[1] Once employed, he quietly begins to gather recruits among those workmen who appear most amenable to persuasion. Secrecy is enjoined upon all the new members he obtains. Other unionists are instructed to apply for such vacancies as occur in the shop. Thus by the secret introduction of union men into the shop from the outside and by patient propaganda

in any event governs its members through its own rules (Amalgamated Sheet Metal Workers' Journal, June, 1908, p. 215).

[1] Buchanan, The Story of a Labor Agitator, pp. 39–41.

among the non-union employees the work of unionizing goes on.

From time to time reports of progress are made to the local union or district council. In some cases it may be months or even years before the shop is sufficiently organized to justify any open action. Finally, when enough members have been obtained to promise a successful issue, the union suddenly reveals to the employer the fact that many of his men are unionists and demands that he make the shop a closed one. If he complies, the non-unionists are given the alternative of joining the union or seeking other jobs. Very often the fact that he has been secretly ensnared incenses the employer, and the union has to strike. Although the employer may defeat the strike, he can never feel sure that union men are not again at work in his shop trying to organize it. He may require all his employees to sign an "iron-clad" agreement not to affiliate themselves with any labor union while in his service, but he knows that in spite of every precaution union men may be working in his shop. There is a wide-spread feeling among the unionists that it is legitimate in industrial warfare to conceal the fact that they are unionists. In this spirit many union men are willing to sign an "iron-clad" agreement, although they never intend to keep it.

In the early days of American trade unionism working "under cover" was a much more common practice than at present. Formerly the unions frequently planned by this means to open shops to unionists rather than to close them to non-unionists, but during the past twenty years practically all such movements have been instituted with the aim of establishing the closed shop. Consequently when it is found impossible to gain sufficient recruits in an anti-union shop to warrant a strike, the union members employed therein are required to seek employment elsewhere.[1] Some unions would be gratified if their employers could be led to agree to maintain open shops. A very large part of the

[1] Lithographers, Constitution, 1901, Constitution of Subordinate Associations, Art. IX, Sec. 3.

membership of the Commercial Telegraphers, for example, is enrolled on a "secret list."

Local unions are ordinarily allowed to send men into anti-union shops when they see fit, but in a few unions, as for example the Lithographers and the Plumbers, the matter is regulated by national rules. In a few unions the plan of concealing the membership of unionists has even been used on a national scale. Thus, in 1899 the Flint Glass Workers undertook to unionize the trade by sending members "under cover" into all non-union plants. Some of the factories were more quickly organized than others, and arrangements were made that the unions should withhold their demands until all the factories were in position to act. On a date fixed by the national officers the proprietors of all the factories were apprised of the fact that the union had control and that strikes would be called unless it was recognized.[1] In 1902 the president of the union reported that recourse had again been had to working "under cover" in order to establish the closed shop in the factories of the United States Glass Company.[2]

A second method of introducing the closed shop into the establishments of anti-union employers is to make concessions to the men in the shop in order to induce them to join the union in a body. Such concessions may take the form of an "amnesty" for past offenses against the union or a reduction in the initiation fee. Under an "amnesty" workmen are admitted to a union "without regard to their past record," and without their being subject to "fines, pains or penalties" which have been imposed upon them. On certain occasions national and local unions have proclaimed "general amnesties" to all "unfair" men. Thus in 1868 the Printers provided for a "general amnesty" for three months.[3] At present, however, the use of "amnesties" is more restricted. The executive council of the Typo-

[1] Reports of President, Secretary, Treasurer and Organizer, 1899, p. 3.
[2] Proceedings of the Twenty-fourth Convention, 1902, p. 60.
[3] Barnett, p. 308.

graphical Union, for instance, has power to declare an "amnesty" only within the jurisdiction of a particular local union. Such amnesties are rarely declared except when a local union is about to make an attempt to unionize an establishment.

An "amnesty" is an inducement to join only to "scabs" and other persons who have incurred the displeasure of the union, but a reduction in the initiation fee is an inducement to the ordinary non-unionist, particularly in those unions where the initiation fee is high. Among the Table Knife Grinders, the Meat Cutters and Butcher Workmen, and some other unions it is not uncommon for reductions to be made in the initiation fee if all the non-unionists in a shop join simultaneously. In 1900 the Table Knife Grinders voted that cards be granted to workmen in shops "in a body" for one dollar per man and fifty cents per boy.[1] The regular initiation fee at the time was twenty-five dollars.

Ordinarily an "amnesty" is granted to all the men in a shop, but occasionally some "scab" may be so objectionable to the union that he will be excepted. No union makes concessions to a body of "unfair" men with the intention merely of opening the shop to unionists. If a minority hold out and refuse to join the union, or if some are excepted from the amnesty, such workmen will be required to seek employment elsewhere. The policy of the unions is similar where a reduction in initiation fees is offered to the men in a shop. If the latter do not accept the union's proposition "in a body" or by a substantial majority, the terms are withdrawn. The reduction in the fee is the price which the union pays for a closed shop. Usually financial concessions are not made to the employees unless the shop is an important one. Small non-union shops are not considered dangerous to the welfare of the union except in trades where the small shop is the prevailing type of business unit. Weak unions are more likely than strong ones to make concessions to non-members, since they cannot so easily bring pressure to bear on workmen to join.

[1] Report of the Fifteenth Convention, 1900, p. 14.

So far we have considered the establishment of the closed shop as brought about by organizing the workmen in a shop. There is also another way of securing the closed shop; that is, by inducing the employer to unionize his shop. In many cases employers have signed closed-shop agreements when there was not a single union man at work in their shop. All unions of any importance maintain a corps of business agents and organizers one of whose chief duties is to persuade employers that it is advantageous to run union shops. Local business agents of the unions, in particular, are supposed to be constantly on the alert to secure the "signatures of employers to contracts and agreements where such exist and have not been signed by all said employers and . . . to endeavor to unionize all shops not thoroughly unionized."[1] Special committees are also frequently appointed to treat with an employer concerning the establishment of the closed shop.

The unions of the building trades, perhaps, have made the most frequent use of this method. In many industries workmen remain with one employer for months or even years. While there are some who work in the shop only for a brief period, the personnel of the shop changes very little during the period in which a union can expect to unionize it. In the building trades, on the contrary, the changes in the personnel of the shop are very rapid. While most contractors employ certain workmen steadily as far as possible, it is rarely the case that the "gang" working for a contractor on one building will be the same as that on another building constructed immediately thereafter. A job in the building trades must be union when it begins, or it is not likely to be union at all. Consequently the building trades unions often go to a contractor to whom work has been let and ask that he conduct the job on the closed-shop plan.

To aid them in securing the immediate recognition of their demands from contractors the unions urge prospective builders to insert in their specifications a clause requiring

[1] Meat Cutters and Butcher Workmen, Constitution, 1900, Constitution and By-Laws for the Government of Local Unions, Sec. 10.

bidders to agree to hire only union labor in case contracts are awarded them.[1] If a building is to be erected for business purposes, threats are often made that a boycott will be declared against the owner unless he gives the work to a union contractor. By political influence the building trades unions have also frequently succeeded in getting city councils and school boards to provide that union men only shall be given employment in the construction or repair of municipal buildings.[2] All unions make strong efforts to secure the exclusive employment of union men in a new mill or factory. The Amalgamated Window Glass Workers, for example, for some time have made provision that no member shall go to work in a factory until the proprietor has signed an agreement.[3]

While the majority of closed shops are established on the initiative of the union, it sometimes happens that employers of their own accord decide to hire union men exclusively and notify the union and their employees to that effect. The employer may be a union sympathizer, or he may consider it advisable from a business standpoint to run a union shop. Many employers who have formerly been union men are heartily in sympathy with the unions. On the other hand, other employers are led to establish closed shops by business considerations, as for example the desirability of using the label. Certain employers have petitioned again and again that their factories be taken over by a union so that they may be awarded the use of its label.[4] Such occurrences lead the unions to believe that the label is the "most potent weapon . . . to-day for securing the closed shop."[5]

[1] The Carpenter, May, 1898, p. 6.

[2] Official Journal of the Brotherhood of Painters, Decorators and Paperhangers of America, December, 1900, p. 6; The Carpenter, February, 1900, p. 10; Painters' Journal, August, 1899, p. 4. Similarly, city councils have provided for the exclusive employment of union men as teamsters, steam engineers, and street cleaners.

[3] By-Laws, 1904, Art. I, Sec. 9.

[4] United Garment Workers, The Weekly Bulletin, September 9, 1903, p. 4. The use of the label is sometimes withheld from shops because of improper sanitary conditions, and so on, and not merely because they do not employ all union men.

[5] Furriers' Journal, April, 1908, pp. 13–14.

Open-shop employers also recognize that in some industries the label is "the key locking the door of the closed shop."[1]

Members of certain employers' associations which have closed-shop agreements with the unions are required to maintain closed shops under penalty of expulsion. If a non-union or open-shop employer joins such an association, he is compelled to see that all of his work people join the proper union.[2] Local employers' associations which have entered into "exclusive" agreements with trade unions require all their members to run closed shops.[3] Some agreements for the closed shop have also been made by district and national associations of employers, in which the unions did not in return agree to work only for the members of the association. Notable examples of such agreements have been those between the Longshoremen and the vessel owners' associations of the Great Lakes prior to 1909 and the agreement between the Coopers and the Machine Cooperage Employers' Association in 1905.[4] The greater part of the agreements made between trade unions and national, district, or local employers' associations have not specified that the closed shop shall prevail in all establishments represented in the associations. Thus, in the agreements made by the Iron Molders with the Stove Founders' National Defence Association it was provided for many years that employers who were running union shops at the time the agreements were signed should continue to do so, but that proprietors of open and non-union foundries were not to be required to run closed shops.[5]

"Closed-shop movements" are usually undertaken by the unions during prosperous seasons, or in years when the demand for men is active. At such times the union can readily place in employment any men who are thrown out of work by strikes to unionize non-union plants. The unions

[1] The Open Shop, September, 1905, p. 416.
[2] Carpenters and Builders' Association of Chicago, Constitution and By-Laws and Membership List, 1897, By-Laws, Sec. 23.
[3] See p. 61.
[4] The Elevator Constructor, February, 1905, p. 16.
[5] Iron Molders' Journal, May, 1900, p. 1.

at such times are quick to demand the closed shop as soon as they have a few men in a plant. In less prosperous seasons the unions are far less active and much slower in calling strikes to establish the union shop, since the men thus thrown out of work are a burden to the union. If the situation becomes very bad, not only will union members be allowed to work under open-shop conditions but they may even be sent into anti-union shops "under cover" to work for non-union wages.

CHAPTER VII.

The Mechanism of Closed-Shop Enforcement.

Two different methods of enforcing the closed shop after it has been established have been developed by the American trade unions. They are known respectively as the "card system" and the "check-off system." The former is much the older and more widely used of the two, and it will be considered first. In the final part of this chapter the methods used by trade unions to control the employment of their members in non-union shops will be briefly discussed.

The card system.—In 1807 a proposal was made in the Philadelphia Typographical Society that membership cards be issued to affiliated journeymen.[1] This was probably the first occasion on which the use of union cards was suggested in America. The resolution was defeated, but not long afterwards many of the local typographical societies began to issue cards to members who wished to travel. This was done because all of the societies strongly objected to working with "strange" journeymen. In local unions in other trades, membership cards were first adopted chiefly for local use, and were first used in the larger cities where it was impracticable for each journeyman to be acquainted with all his fellow-members. By about 1840 the membership card had come into general use.

Since 1890 the membership card has been largely superseded for local use by the "working card," which differs from the membership card in that it is periodically renewed on the payment of dues.[2] Various names are given to the "working card" in different unions, such for example as "due book," "due card," "pass card," and "register check." In addition to the working cards of single unions two other

[1] Barnett, p. 284, n.

[2] The working card was first used by the Typographical Union as early as 1860 (Ibid., p. 295, n.).

kinds are in use. The "interchangeable working card" is issued by two unions which claim jurisdiction over the same work. The "allied trades card" is issued by combinations of unions which together enforce a joint closed shop. At least as early as 1892 the allied trades card was in use among local building trades councils.[1]

There is general similarity in form among all working cards. Upon them are inscribed the name of the issuing union, the name of the member to whom the card is granted, and the length of time for which the card is to run. The signature of a union official and, in many cases, the seal of the union are also attached. Cards are usually issued quarterly, though some unions have monthly cards, while others have semi-annual or annual cards. In many unions, as for example the Plumbers,[2] the color of the card is changed each month or quarter. The due book or due card is a form of the working card designed to save the expense of issuing new cards periodically, and also to afford an accounting check on the financial officers of local unions. When dues are paid, a stamp resembling in appearance an ordinary postage stamp is affixed in a designated space in the book or on the card.[3]

The financial secretaries of local unions usually issue working cards to members on the last meeting night in the month or quarter. Occasionally cards will be given to a person who is in arrears for dues,[4] but as a rule they are not issued to any one until all his dues, fines, and assessments have been paid. When members are admitted to the union, they are given working cards immediately. Sometimes they are allowed to pay their initiation fees and advance dues in installments. Interchangeable working cards are obtainable only upon payment of dues in the proper union. The allied trades card, as already noted, cannot be

[1] The Painter, February, 1892, p. 4.
[2] Constitution, 1897, Art. VIII, Sec. 2.
[3] Brewery Workmen, Constitution, 1903, Art. XIII, Secs, 1, 2.
[4] This is done frequently during dull seasons. See Flint Glass Workers, Proceedings of the First Biennial and the Twenty-third Convention, 1901, p. 58.

secured until a workman obtains a membership or working card in the union of his trade.[1] All unions forbid members to lend or alter working cards with intent to defraud. Certain restrictions are also imposed upon the granting of certificates to replace cards reported as lost or stolen.

Instead of a working card, the Marine Engineers, the Hotel and Restaurant Employes and Bartenders, the Street and Electric Railway Employes, and the Shingle Weavers use a button, which is displayed on the coat or cap. Local unions of the Teamsters also have frequently used buttons. The United Mine Workers in 1902 adopted a "working button" in certain districts where the operators had forbidden the union to examine working cards upon their premises. At one time the Denver[2] and Philadelphia[3] building trades councils issued both a card and a button. A proposal to substitute a button for the working card was defeated at the convention of the Iron, Steel and Tin Workers in 1905.[4] Working buttons, like working cards, are issued monthly, as in the case of the Shingle Weavers; quarterly, as in the case of the United Mine Workers; or yearly, as is done by the Marine Engineers.[5] The Mine Workers distinguish the different quarters of the year by different numbers and different colors on the buttons. The color or size of the button may also be varied to indicate to what branch of a union a member belongs. This is done by the Hotel and Restaurant Employes and Bartenders.[6]

The button is defective as a device of identification since it does not contain the owner's name. If it falls into the hands of a non-union man, he can therefore pass himself off as a unionist more easily than with a union card. The chief advantage of the button, from the union point of view, is that it is a more patent mark of identification. A non-

[1] See p. 100.
[2] The Labor Compendium, August, 1905, p. 10.
[3] Ibid., December, 1905, p. 3.
[4] Journal of the Thirtieth Annual Session, 1905, p. 7439.
[5] The Marine Engineers require dues to be paid in advance for the entire year before the button is issued.
[6] Constitution, 1901, Art. XIII, Sec. 2.

unionist, without a button, is very conspicuous in a shop under union control, and there is no chance of his being overlooked. Besides, in some unions like the Hotel and Restaurant Employes and Bartenders the button serves partly as a label to indicate to customers that union labor is employed. In the same way, also, it enables persons friendly to a union to discriminate against non-members. Union teamsters will at once give the right of way to a street-car motorman with a union button on his cap, but they will delay as much as possible if the motorman wears no button. In cities like Chicago where traffic is congested effective blockades can be established very quickly without appearing intentional.

Besides requiring that their members shall carry a card or a button to distinguish them from non-unionists, the unions provide for the inspection of cards and buttons. In practically all of the older closed-shop unions it was originally the duty of each member to ascertain for himself whether his fellow-workmen were unionists.[1] As long as shops employed a small number of men this was not an insuperable task, but with the increase in the number of employees in the shop this method of inspection in most unions has become impracticable.

In two national unions, the Seamen[2] and the Musicians, members are still required to ascertain whether their fellow-workmen are unionists in good standing. The local secretaries of the Seamen ordinarily know whether there will be non-union men in the crew of a vessel on which it is proposed to ship union members. The burden on members is thus somewhat lightened. The Musicians make one exception to their rule. Local leaders of theatre orchestras are required to ask for the cards of travelling members performing at theatres.[3] The Hatters have a rule of long

[1] Massilon Miners' Association, Constitution, 1864, p. 9, Sec. 28. See also rules of the Boston Journeymen Bootmakers of 1840 in Commonwealth v. Hunt, Thatcher's Criminal Cases, 609.

[2] Lake Seamen, Constitution, 1907, By-Laws, Sec. 15.

[3] Constitution, 1908, By-Laws, Art. VI, Sec. 19, B. In his report for 1908–1909 the secretary of the Musicians complained that the

standing that a union journeyman, before introducing to an employer a hatter who applies for work, must examine his register check or travelling card.[1] A few other unions, such as the Barbers, place the responsibility for the inspection of cards or buttons in the smaller shops upon all union members at work there.

Most unions, however, have delegated the duty of card inspection to a shop officer, known usually as the "shop steward," or to a "shop committee."[2] In the larger cities many unions employ a business agent, "walking delegate," or "patrolman," one of whose duties is to discover any non-union men at work in his district. In some cases the business agent takes over all the work of card inspection from the shop stewards or committees, but more often he acts in conjunction with them. In those districts of the United Mine Workers in which cards are used they are inspected by the "checkweighman."[3] Allied trades councils often employ a business agent, one of whose duties it is to inspect or to supervise the inspection of the allied trades working cards.

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examination given to cards of travelling musicians was often of the "flimsiest character."

[1] National Trade Association of Hat Finishers of the United States of America, Constitution, 1863, Art. IX. When a hatter applies for work in a union factory, he is not allowed to go to the foreman or employer. He must hand his travelling card or register check to one of the journeymen in the shop. The latter then presents the card to the employer with the remark, "Journeyman on turn." This means that the owner of the card is seeking employment. The employer may then "shop," that is, hire, the applicant or not as he sees fit.

[2] The steward has different names in different unions. Some of these are "local delegate," "shop delegate," "ship's delegate," "shop collector," "shop secretary," "shop monitor," "card man," "chapel chairman," "job steward," and "preceptor." The committee is variously known as the "lodge," "shop," "mill," or "pit committee." Shop stewards and committees are elected in some cases by the members at work in the shop and in others by the local union. In the building trades the first man to go on a job is usually required to act temporarily as the steward. Some unions, as for example the Bricklayers and Masons, provide that when members go to work on a job and find that it has no steward, they shall prefer charges against the members hitherto employed there.

[3] The checkweighman is a miner in the pay of the union who stands at the pit entrance and sees that coal is properly weighed and credited.

When new employees come to work in a closed shop, the steward or a member of the shop committee, as the case may be, asks to see their cards. This request is made either immediately after their employment begins or within a very short time. An examination of the cards or buttons of all the men in the shop is also made at stated intervals, the first working-day of each month or quarter being the day generally selected.[1] In those unions where the steward is also a collector of dues he makes his rounds on pay days. Closed-shop agreements often specify that the authorized officers of a union while inspecting cards shall not be interfered with by the employer.[2] Union members who refuse to exhibit their cards or fail to show proper respect to the steward or committee while performing this duty are generally subject to a fine.[3] A steward, business agent, or committee that fails to obey the rules regulating card inspection is subject to a similar penalty.[4] When a card or button has been passed as valid, it is in nearly all unions restored to the owner, who is expected to carry it at all times. In the Hatters, however, as soon as a union journeyman is "shopped" he must deposit his register check with the shop steward.[5] The United Mine Workers also have a rule in some of the bituminous coal fields that members shall leave their cards in the possession of the checkweighman.[6] The cards are returned when their owners wish to obtain employment elsewhere.

There is at least one instance in the early days of American trade unionism of the performance of the combined

[1] In the anthracite coal mines controlled by the Mine Workers this day is known as "button day." In some unions, like the Stereotypers and Electrotypers, stewards or business agents may examine the cards in a shop whenever they see fit.

[2] Bricklayers and Masons, Thirty-fifth Annual Report of President and Secretary, 1900, p. 4.

[3] Elevator Constructors, Local Union No. 2, Constitution, 1905, Art. XXIII, Sec. 5.

[4] Bricklayers and Masons, Forty-first Annual Report of President and Secretary, 1906, p. 37; United Garment Workers, Proceedings of the Ninth Annual Convention, 1900, p. 7.

[5] Journal of the United Hatters, February, 1903, p. 12.

[6] District No. 8, Constitution, 1903, Art. X, Sec. 2.

duties to shop steward and business agent by a committee. The Philadelphia Cordwainers in 1806 appointed a "tramping committee" whose business it was to "watch the Jers [that is, journeymen] that they did not scab it. They were to go their rounds every day to see that the Jers were honest to the cause." Service on the committee was obligatory, and no compensation was given for it. It soon came about, however, that "the body thought it requisite to take one man instead of three for the tramping committee and they paid him; they took one Nelson for the business."[1] In all likelihood Nelson was the first American "walking delegate." The Pittsburgh Cordwainers in 1815 also had "tramping Committees . . . go round and inspect the shops . . . to see that none were working unlawfully."[2] At Hudson, New York, the same policy was pursued by the Cordwainers in 1836.[3] Again on March 3, 1856, the Cigar Makers' Association of Maryland appointed a committee of five "to go round to the shops to see if any of the cigar makers are working against the rules of the association."[4]

The earliest use in any trade union of the term "steward" which we have found was in 1837 in the Journeymen Black and White-Smiths' Beneficial Society of the City and County of Philadelphia. This organization had a steward in each shop whose duty it was to investigate and report on the cases of workmen who applied for relief out of the general funds.[5] There is no evidence that they were instrumental in enforcing the closed shop, but in 1857 we find that local unions of the Stone Cutters had "shop stewards" who were employed in this manner.[6]

There are also some unions which impose the duty of inspecting working cards upon the employer or his representatives. The most important organizations in this group

[1] Commons and Gilmore, Vol. III, pp. 75–76.
[2] Ibid., Vol. IV, pp. 29, 34.
[3] Ibid., p. 280.
[4] MS. Minutes.
[5] The Black and White-Smiths' Society v. Van Dyke, 2 Wharton's Pa. Repts., 309.
[6] Monthly Circular, August, 1857, p. 3.

are the Plumbers, the Horseshoers, the Musicians, the Marine Engineers, the Printing Pressmen, and the Theatrical Stage Employees. The first three unions sometimes make the employer responsible for employing non-unionists when unionists are available.[1] If he hires non-unionists he is fined.[2] His responsibility ceases when union men have been hired. He is not expected to see that they keep in good standing. In "one-man shops" in all trades the employer is required to ascertain whether his "extra help" is union, and he must also see that his apprentices or helpers hold cards if they are required to do so.[3]

The Printing Pressmen require the foreman of a shop to hire none but union men when they are available.[4] He must ask applicants for work whether they are union men, and demand to see their cards. For violation of this rule the foreman is fined. The other unions of the printing trades imitate the Pressmen to some degree, but they are by no means so severe with foremen who fail in their duty. The Marine Engineers provide that members sailing as chief engineers must employ "brother engineers" as assistants if possible.[5] Foremen in some unions are required to inspect cards, even after the men have been hired. As noted above, the Musicians authorize local leaders of theatre orchestras to call for the cards of all travelling musicians before beginning an engagement with them.[6] The Theatrical Stage Employees provide that the master machinist shall demand to see the cards of all persons coming to work in a theatre as

[1] This is done by the Plumbers and Horseshoers only when the employer is a member of an association with which an "exclusive" agreement has been signed.

[2] International Horseshoers' Monthly Magazine, January, 1908, p. 27; Plumbers, Gas and Steam Fitters' Official Journal, May, 1899, p. 13; Musicians, Local Union No. 161, Washington, D. C., Constitution, n. d., Art. XX, Sec. 2.

[3] Frequently an employer, to secure himself against any difficulty with the union, voluntarily examines the cards of all applicants for work. See Journal of the United Hatters, December 1, 1898, p. 2.

[4] Constitution, 1909, By-Laws, Art. IV, Sec. 1.

[5] Constitution, 1904, Constitution for Subordinate Associations, Art. IX, Sec. 3.

[6] See p. 140.

stage employees.[1] Local unions have sometimes required foremen to make a regular examination of cards. Thus the Bricklayers' Protective Association of Philadelphia in 1885 made it "the duty of the foreman or oldest hand on each job to examine the cards every Tuesday morning of the different members working with him and allow no member to work unless he is in good standing."[2] Most unions, however, do not desire to trust the employer or a foreman with the enforcement of union regulations.[3]

Despite the elaborate machinery which the unions have developed for this purpose, the enforcement of the closed shop depends largely on the vigilance of individual unionists. Foremen and employers often neglect to ask for an applicant's card, and in many shops stewards, business agents, and shop committees become careless in the performance of their duties. In many strong unions members are urged to request to see the cards of their fellow-employees and to display their own cards in turn.[4] As soon as a non-unionist is discovered at work in a closed shop the fact is reported to the local union. He is asked to make application for union membership and, perhaps, to deposit with the union a part of the initiation fee.[5] If he does as requested, the non-unionist is then ordinarily given a "working-permit"[6] which entitles him to work in that shop or in any other union shop until his application for membership has been acted upon. In some unions the permit must be secured from the

[1] Constitution, 1898, By-Laws, Art. I, Sec. 8.

[2] Constitution, By-Laws and Rules of Order, 1885, By-Laws, Art. VI, Sec. 3.

[3] In 1898 the Potters indefinitely postponed the consideration of a resolution which provided that "all bench bosses, foremen and others in authority" should see that all men under their supervision held union cards (Proceedings of the Eighth Annual Convention, 1898, p. 32).

[4] The Carpenter, August, 1901, p. 3; Electrical Workers, Constitution, 1905, Art. XXVI, Sec. 15.

[5] Painters' Journal, June, 1893, p. 2. In case a workman does not have the money to make an advance payment, practically all unions will accept an order on the employer for the necessary amount. If his application for admission to membership is refused, whatever he has paid is refunded.

[6] A "writing" is the term used by the Cloth Hat and Cap Makers.

business agent before employment begins.[1] Similarly, when union members are in arrears for dues[2] or when travelling members do not have their cards,[3] they must either secure a permit or make a deposit with the union.

When non-unionists refuse to apply for membership in the union or when members in arrears refuse to make payment, a request for their discharge is made to the foreman or to the employer. Some unions, as for example the Spinners and the Tin Plate Workers,[4] go no further than this, and do not strike if the employer refuses. If the employer has signed a closed-shop agreement with a union, less difficulty is ordinarily experienced in securing the discharge. When an employer has given a bond to employ union men only, he is still less inclined to deny the union's request.[5] The strike, however, is the weapon on which the enforcement of the card system depends. Some unions, as for example the Pattern Makers, "pull" their members out of a shop one by one when it is found impossible to secure the discharge of a non-unionist. In the building trades unions, on the other hand, business agents and even shop stewards are authorized to call a strike immediately if a non-union man is found at work on a union job.[6] This policy is partly due to the transitory nature of building operations. The great mass of unions, on the other hand, will not allow strikes to be called against non-union men unless, as is required in other strikes, they have the sanction of the local or national union.

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[1] The International Horseshoers' Monthly Magazine, July, 1902, p. 18.
The Granite Cutters' Journal, September, 1902, p. 7.

[2] Iron Molders' Journal, December, 1894, p. 3.

[3] Proceedings of the Fifth Convention, 1903, p. 299; Proceedings of the Eighth Convention, 1906, pp. 536, 579.

[4] In some unions such bonds are frequently given. See, for instance, The Painter, August, 1889, p. 1.

[5] Bricklayers and Masons, Proceedings of the Twenty-fifth Annual Convention, 1891, p. 89; New York Building Trades Council, Constitution and By-Laws, 1910, Sec. 37. In the Stone Cutters the shop steward has authority to "rap on his chisel" and call an immediate strike against a non-union man.

The check-off system.[1]—The check-off system has been used almost exclusively in the two industries of bituminous coal-mining and window glass manufacture. From the union standpoint the check-off system works with much less friction than the card system. The latter, as has been indicated, involves the issue of cards or buttons, their inspection by union representatives, appeals to employers to discharge workmen, and finally, the calling of strikes. Under the check-off system almost the entire burden of enforcing the closed shop is thrown upon the employer. He is required to deduct dues, fines, and assessments from the wages of his men.

In the bituminous coal fields of Ohio, Indiana, Illinois, Iowa, Kansas, Arkansas, Missouri, Texas, Indian Territory, Wyoming, and Montana the United Mine Workers have signed numerous agreements with mine operators in which it is specified that the latter shall, upon receipt of "proper individual or collective continuous order," deduct dues and other assessments which the union authorizes.[2] In some agreements, as for example that made by District No. 11 with the Indiana Bituminous Coal Operators for 1906–1908, it was provided that deductions shall be made from the wages only of such miners or mine laborers as "give their consent in writing" or furnish "properly signed authority."[3] As such an arrangement does not preclude the open shop, the Mine Workers endeavor, wherever possible, to obtain agreements in which the "check-off" is applied to all persons in a mine over whom the union claims jurisdic-

[1] The section here published, relating to the check-off system was published substantially in its present form, in the *Johns Hopkins Circular*, April, 1910. In the *Quarterly Journal of Economics* for August, 1911, Mr. F. A. King has an interesting account of the "Check-Off System and the Closed Shop among the United Mine Workers," which, unfortunately, appeared too late to be of service in the present connection.

[2] State Agreement between the Illinois Coal Operators' Association and the United Mine Workers of America, District No. 12, 1908–1910, p. 24.

[3] Terre Haute Agreement between Indiana Bituminous Coal Operators and United Mine Workers of America, District No. 11, 1906–1908, p. 20.

tion. In order to protect the operators from suits by individual miners to recover the amounts deducted from their wages the union agrees to furnish, on demand, a collective order authorizing deductions to be made.[1]

In some agreements certain restrictions are placed upon the collection of fines imposed by a local union. Thus the Illinois State Agreement for 1908–1910 specifies that "in case a fine is imposed, the propriety of which is questioned, the amount of the fine shall be withheld by the operator until the question has been taken up for adjustment and a decision has been reached." Other agreements provide that no fine shall be deducted from wages unless it has been ordered by a two-thirds vote of the local union.[2] Exceptions of this kind are intended to prevent the operators from being forced to endorse palpably unfair treatment of a miner by the local union. The agreement of District 5 for 1906–1908 exempts the operators from making deductions for initiation fees "unless locally agreed between the Operators and Miners."[3]

In some districts a maximum amount of "check-off" is provided for, the exact amount being subject to local adjustment.[4] The agreements usually provide also that before the operator pays anything to the union, he shall have the right to abstract from the wages of all employees sums due him for rent, tools, smithing, powder, and so forth. He is also authorized to deduct assessments for accident and death benefit funds and the money due from each man toward the salary of the checkweighman.[5] After the operator has made

[1] Agreement and Scale of Wages between Operators and Miners, United Mine Workers of America, District 21, in the Bituminous Mines of Texas, 1906–1908, Sec. 6.

[2] Official Mining Scale of Association of Pittsburgh Vein Operators of Ohio for their Mines in Belmont, Harrison and Jefferson Counties, Ohio, and the United Mine Workers of America, 1904–1906, Rule 9, pp. 11–12.

[3] Pittsburgh District No. 5, Pennsylvania, Scales and Constitution, 1906–1908, p. 11.

[4] Agreement between the Members of the Iowa Coal Operators' Association and the Members of District No. 13, United Mine Workers of America, 1904–1906, Resolution No. 15, p. 32.

[5] Pittsburgh District No. 5, Pennsylvania, Scales and Constitution, 1906–1908, pp. 11–12.

the deductions from wages, he is required to send to the union a statement "showing separately the amount of dues, assessments, fines and initiations collected" and the names of those employees whose dues, and so on, for any reason remain uncollected.[4] If the union wishes, he must also afford it the means of ascertaining the correctness of his representations.[2]

The early "rules for working" of the Window Glass Workers, Local Assembly 300, Knights of Labor, provided merely that manufacturers whose factories were organized should "deduct money from members' wages, when requested to do so by the chief preceptor."[3] Certainly as early as 1899 provision was made that manufacturers were to deduct from the earnings "of all members" a specified percentage to be paid to the organization as dues.[4] A statement was also to be furnished by them showing from whom such collections had been made. While this arrangement, literally interpreted, applied only to members of Local Assembly 300, in reality it covered all the workers in an organized establishment, since no one was allowed to obtain employment therein without a "clearance card" issued by the preceptor of the factory where he had last worked. To obtain such a card a glass worker had to be a Knight in good standing. The "rules for working" also provided that if any employer overpaid a glass worker or failed "to deduct and forward" the amount due the Assembly, he was to be "held liable for payment of the same." His action was also to be considered an infraction of the "working scale," and members of the Assembly, if they chose, could then cease work without giving him the usual seven days' notice.[5]

[1] Joint Interstate Agreement between the Southwestern Interstate Coal Operators' Association and the United Mine Workers of America, 1904–1906, p. 9.

[2] The check-off system prevails widely in the coal-mining unions of southern Wales. It is also found among the unions in the English manufactured iron trade (Webb, Industrial Democracy, p. 210).

[3] Scale of Wages and Rules for Working, for Blast ending June 30, 1894.

[4] Ibid., for Blast ending June 15, 1900, Sec. 33.

[5] Ibid.,

In 1901 each member of the Assembly was required before going to work "to sign and place on file with each manufacturer" an agreement authorizing the latter to deduct dues and so on, from his wages.[1] Finally, in 1905, it was provided that all window glass workers accepting employment under the union scale must "agree to and authorize the manufacturer, company, firm or their agents to deduct one per cent. of all their earnings," and in addition "waive all legal rights to recover money obtained from wages." At each factory the manager or his representative was compelled to acquaint all workmen with the above requirement before giving them employment. If workmen were hired who refused to assent to deduction from their wages, the firm or company employing them was required to pay their dues, if need be, out of its own pocket.[2] Similar rules are in force at the present time, but have been largely ineffective since 1905 owing to the weakened condition of the Assembly.

For a number of years the Amalgamated Window Glass Workers of America[3] and the Window Glass Cutters and Flatteners' Association[4] have also required employers to deduct the dues of members from wages. Their rules have been very similar to those of Local Assembly 300. No one of these three organizations, it may be noted, has ever used the term "check-off" to describe its method of collecting dues. The expression originated with the Mine Workers, and they appear to be the only union using it.

In a few other trades the check-off has been adopted by local unions. In Baltimore, for example, certain clothing manufacturers have been accustomed to deduct union dues from the wages of employees eligible to membership in the

[1] Scale of Wages and Rules for Working for Blast ending June 30, 1901, Sec. 35.

[2] Ibid., for the Blast of 1905 and 1906, Sec. 28.

[3] Window Glass Workers' Association of America, Scale of Wages and Rules for Working, for Blast 1902–1903, Sec. 25. In 1904 this union became the "Amalgamated Window Glass Workers of America."

[4] Scale of Wages and Rules for Working for Blast of 1900–1901, Sec. 26. See also Scales for 1905–1906, 1906–1907, and February, 1909–September, 1909.

United Garment Workers. These employers are anxious to keep their shops union in order to have the use of the label, and it has been found difficult to do this by the card system, since a large percentage of the employees are women who take little interest in union matters. In 1902 the union iron workers at Birmingham, Alabama, went on strike to compel the employers "to deduct from the pay of the men their dues and hand them over to the union officials."[1]

The limited use of the check-off system can be explained on two grounds. First, the unions desire to remain as self-reliant as possible, and it seems a confession of weakness for them to ask employers to assist in collecting dues. It is also thought that if a union comes to depend on employers for keeping up its organization and expects them, as it were, to be its "walking delegates," the interest of its members in union affairs will gradually diminish. Consequently, if the employers ever determine to run open or non-union shops, the union will be less able to defeat the movement. Secondly, employers are ordinarily disinclined to assist actively in any plan to compel their employees to join a labor organization.[2] The check-off system among United Mine Workers has, however, not been opposed in most of the districts by the operators. Under the card system it frequently happened on "card day" that workmen who held important posts about a mine had neglected to secure a card. This sometimes necessitated the tying up of a whole shaft. Because of such difficulties the operators felt that it would be more economical for them to collect dues for the union.

The Mine Workers themselves regard the check-off system as a useful arrangement. In a union composed of workmen of so many nationalities there are many difficulties in

[1] Bulletin of the National Metal-Trades Association, November, 1902, p. 181.

[2] "Trade unionism demands that our cashiers . . . collect from its members in our employ the amount due the unions and the sum thus collected is paid into their treasury to further encroach upon our business. That does not sound a bit good, does it?" (Address of Mr. James W. Van Cleave before Citizens' Industrial Association of America, in Proceedings of the Second Annual Convention, 1904, p. 23).

the working of the card system. The unions in the window glass industry also seem to have been well satisfied with the plan of having employers deduct dues. But at present there appears to be little desire among unions to substitute the check-off for the card system.

Union supervision over non-union shops.—Trade unions not only endeavor to keep non-union men from working in shops under union control but they also take measures to keep union men out of non-union shops. Business agents, in particular, are expected to discover whether union members are working for "unfair" or non-union employers. When it has been shown that a member is guilty of such misconduct, he is subject to fine, suspension, or even expulsion, but ordinarily he is fined for the first offense. If he violates the rule again, the fine is increased, and on the third offense he is expelled. Some unions, however, will "scab" a member the first time he works in a non-union shop.[1] Often a union is forced to relax its rules and allow members, under certain conditions, to work for a non-union employer. In some cases a mere vote of the union declares certain non-union shops "open." In other unions, members must personally obtain permission from a local union, district council,[2] or the national union.[3] When they have obtained consent to work in non-union shops, they are often given a written permit.[4] This serves them as evidence to rebut any charge of "scabbing" that may be brought against them.[5]

[1] In order to prevent union men from obtaining employment inadvertently in non-union or "scab" shops, many unions publish a list of such establishments in their journals.

[2] United Mine Workers, District No. 13, Constitution, 1906, Art. XII, Sec. 7.

[3] Flint Glass Workers, Constitution, 1909, Art. XXIII, Sec. 3. Printing Pressmen, Constitution, 1903, By-Laws, Art. I, Sec. 5.

[5] Flint Glass Workers, Proceedings of the Twenty-fourth Annual Convention, 1902, pp. 53, 382, 386. In 1898 the Molders provided that members working in non-union or open shops could not claim or receive financial support if discharged for any reason unless "specifically authorized" by the union "to act in its behalf" (Constitution, 1898, New Decisions, No. 31). The Typographical Union will not recognize a strike in an open or non-union office.

CHAPTER VIII.

The Closed Shop as a Trade-Union Device.

To many persons the closed shop seems an arbitrary institution which could well be abandoned without injury to the cause of organized labor. In their view the exclusion of non-unionists from employment is for no ostensible reason except to exercise accidental power or wantonly to deprive certain workmen of a livelihood. The friends of union labor who take this view wish to see the open shop universally established. Under the open shop it is claimed that both union and non-union men would receive fair treatment, as discrimination in employment would not exist. Employers, it is said, would not try to abolish collective bargaining, since they are not only ready but anxious to make contracts with the "proper kind" of unions. Finally, the friends of the open shop declare that a properly conducted union can attract non-unionists to itself by means of beneficial, social, and educational features. To illustrate how well labor organizations can succeed without discriminating against non-members, attention has usually been called to the four great railway brotherhoods, the Locomotive Engineers, the Railway Conductors, the Locomotive Firemen and Enginemen, and the Railroad Trainmen. These organizations are admittedly strong and vigorous beyond the majority of American trade unions, although they do not refuse to work with non-unionists.

In answer to such criticism the closed-shop unions have explained at some length their motives in requiring the exclusive employment of union members. In the first place, they claim that the closed shop is necessary to enforce discipline over union members. If the union scale and the rules are to be enforced, there must be some sufficient pen-

alty attached to their violation. The fear of exclusion from employment is considered the "best possible means" of holding members "to fidelity to the union."[1] There is no penalty which a workman fears so much as that of being deprived of his employment and possibly of his livelihood. This is the punishment administered to him in case he violates union rules or wage scales in an establishment where the closed shop is enforced. Neither social ostracism nor loss of the right to share in accumulated union funds can compare in rigor with exclusion from a trade.

Moreover, it is argued that unless a union has complete control over the workmen in a shop it cannot prevent non-unionists from rendering its rules ineffective. Particularly is this the case if the open shop involves the use of individual agreements.[2] Non-union men are then not restrained from working under whatever conditions they see fit. Although union men may agree among themselves to work only for certain wages, non-unionists often prove "subservient" enough to work for less. The employer naturally favors the cheaper men and will endeavor to fill his shop with them. Accordingly one by one union men will be discharged when non-unionists can be secured. The open shop, therefore, "means only an open door through which to turn the union man out and bring the non-union man in to take his place."[3] "Weak-kneed" union men who do not wish to lose their jobs will follow the example of the non-unionists and accept reductions in their wages. In a short while the wage scale has been hopelessly undermined. "The result of a number of non-unionists cutting wages or the price of work is like the existence in a community of healthy people

[1] At the trial of the Boot and Shoemakers of Philadelphia in 1806 a witness stated that the object of the society was "to support the price of wages," and that "the scab law was the stimulus to the members to support what they undertook; there must be a stimulus in every society to keep the members to their common engagements" (The Trial of the Boot and Shoemakers of Philadelphia. Taken by Thomas Lloyd. Reprinted in Commons and Gilmore, Vol. III, p. 86).

[2] The International Woodcarver, July, 1905, p. 4.

[3] Darrow, The Open Shop, p. 26.

of a man afflicted by a contagious disease."[1] The open shop thus compels organized workmen to give way to the unorganized.[2]

The closed-shop unions also claim that the open shop makes collective bargaining to a large extent ineffective. Employers in trade agreements are "constantly seeking to extend the responsibility of trade unions." "To meet this responsibility it is incumbent upon the labor organizations to exercise jurisdiction over all the men employed in the same shop, over all those working at a given trade or calling, otherwise the unions will be powerless to enforce any contract."[3] A bulletin of the American Federation of Labor sets forth that "the agreement . . . of organized labor with employers depends for its success not only upon the good will of the union and the employer toward each other, but that neither shall be subject to the irresponsibility or lack of intelligence of the non-unionist or his failure to act in concert with, and bear the equal responsibility of, the unionists."[4] Only when the closed shop is enforced are all workmen in an establishment equally responsible for the observance of a collective contract with the employer, since all are then parties to it and can be severely disciplined if they violate its provisions. Only under such conditions do the unions consider that collective bargaining becomes "complete, effective, successful."

One point which the unions have not emphasized is the part that the closed shop plays in excluding from the trade persons who are ineligible to union membership. The question is often asked, however, why it is not possible for

[1] Mitchell, p. 281.

[2] Statements like the following are easy to find in the journals of closed-shop unions: "The open shop means to unionism just what slow poison means to the human system." "On the open shop question there is nothing to arbitrate. Our unions cannot consent to arbitrate a question that involves their very lives." "The strongest argument against the open shop is, that if the employer were permitted to hire non-union workmen, the union workmen would soon be displaced and union standards broken down." "An establishment cannot long remain . . . part union and part non-union."

[3] The Elevator Constructor, December, 1904, p. 26.

[4] The Granite Cutters' Journal, November, 1903, p. 5.

unions to discriminate against "scabs" and inadmissible persons and still make no objection to non-unionists eligible for membership and with clear records. The unions sometimes answer that union men in a shop have no means of ascertaining whether a non-unionist is working below the established rate. This, however, is not a valid reason, as uniform scales are often paid in open shops. The one reason why the unions have preferred to discriminate against all non-union men rather than against certain classes of non-unionists has been the constant friction with the employer involved in the latter method. With every new case of exclusion the unions were compelled to explain why they took such action. By requiring the employer to recognize the rule that none but union members should be hired the exclusion of undesirable persons became "automatic," and each case of discrimination did not become "the occasion of a new difficulty."[1]

The unions also claim that the continued presence of non-union men in a shop is likely to make for a completely non-union shop. A prominent spokesman for the unions recently said: "The promotions, the easy places, the favors, all fall to the non-union workman, whose presence and whose attitude is ever helpful to the employer and a menace to his fellow workman. If some one is to be relieved for a day, if a laborer is given extra work, if a workman is specially commissioned for an important duty, and if some one is to be promoted it is always the non-union man. This is his reward for minding his own business. . . . Union men are much like other men. They cannot long be persuaded to pay dues, to make sacrifices for their organization, when they find that others are favored or promoted over them, or receive special privileges because they are non-union men."[2]

That many open-shop employers have discriminated against union men cannot be denied. Although they have usually avoided "victimizing" them openly, yet they have

[1] Barnett, p. 289.
[2] Darrow, p. 27.

easily found pretexts on which to discharge union men, especially officers and "agitators." The laws passed in several States and by Congress against the discharge of workmen because of union membership have been for the most part held to be unconstitutional.[1] The only effective defense that a union can make against an employer who discriminates against its members is to discriminate against non-unionists.[2] In certain closed shops the danger that the employer will gradually eliminate the unionists is not present. In these shops all workmen of a certain class receive uniform pay, and work the same number of hours under identical conditions. The advocates of the closed shop contend, however, that even if all employees are paid at the same rate and no preference is shown to non-unionists, there would still be, in most trades, a disastrous falling off in union membership in such shops. Non-union men would receive all the advantages of the improvement of working conditions obtained by the union, and yet contribute nothing to the support of the organization. When union members see that they are bearing burdens from which the non-unionists escape, they will be likely to drop their membership.[3]

That this does not always occur was proved by the suc-

[1] See, for example, Adair v. United States, 208 U. S. 161.

[2] "From the economic point of view the fewest difficulties are encountered in the case of a union that is compelled to fight for the mere right to exist. When employers undertake . . . to discriminate constantly against union men . . . the organization is likely to disintegrate unless it resists the employment of non-union men. . . . It is hard to criticize a union for meeting discrimination with discrimination" (Bullock, "The Closed Shop," in Atlantic Monthly, October, 1904, p. 435).

[3] Bricklayers and Masons, Thirty-eighth Annual Report of President and Secretary, 1903, p. 432. In discussing the open-shop agreement which the Printing Pressmen signed with the Typothetae in 1904, the International Bookbinder (September, 1904, p. 168) offered the following comment: "We cannot see the benefit that would be derived by allowing employers to give to non-union men the same wages that union men have struggled and fought so hard to obtain. There may be cases where non-union men may join the organization if their wages have been increased thereby, but how can we expect union men to pay their dues and assessments if the organization they are members of secures increase of pay for men who are not members, and in most cases enemies of unionism, and will not under any condition join the union."

cess of the open-shop agreements formerly in force in the coal-mining and stove-founding industries. Under them the unions made great increase in membership. This result was due to three characteristics of these agreements. In the first place, they were made by associations of employers and not by individual employers. The associations promptly fined any member who violated the agreements, as they wished to keep all employers on the "same competitive level." Secondly, the agreement covered "not only members of the union, but all positions of the same grade, whether filled by union or non-union men."[1] Finally, provision was made for the reference of "all unsettled complaints either against unionists or non-unionists to a joint conference of the officers of the union and the association." Arbitration was used in settling "all matters of discrimination as well as matters of wages, hours and rules of work, . . . all questions of hiring, discharging and disciplining both union and non-union men."[2] Thus in every direction the unions were guarded against discrimination.

To the railway unions and brotherhoods also there is little danger in the open shop. Railroad corporations do not bargain individually with their employees, but fix a uniform rate for all workmen of a certain class. All the conditions of employment apply to union men and non-unionists alike. The only exception to this rule is found in the case of certain railroads in the South which pay a lower scale of wages to negro than to white firemen. This is considered a serious menace by the Locomotive Firemen and Enginemen, but they have as yet been unable to secure any change. The four great railway brotherhoods are also protected by the fact that the handling of trains is a highly responsible task which cannot be undertaken on short notice by untrained men. The union garment worker in an open shop must constantly meet the competition of the unorganized newly-arrived immigrant, but there is little danger that union

[1] Commons, "Causes of the Union Shop Policy," in Proceedings of the American Economic Association, 1905, p. 146.
[2] Ibid., p. 147.

train crews, no matter how opposed a railroad corporation may become to labor unions, will be gradually discharged to make way for "independent" workmen.[1] In all highly skilled trades there is less necessity for the closed shop than there is in those demanding less skill.

The railroad brotherhoods find it possible under the open shop to secure a large membership and to enforce their rules because of the exceptional value of their beneficiary features. These organizations issue insurance against death and disability in policies of $1,000 or more. The Locomotive Engineers, in fact, will issue a policy for as much as $4,500.[2] In the closed shop unions such as the Carpenters, Cigar Makers, Granite Cutters and Tailors death benefits are paid only in amounts varying from $25 to $550.[3] No disability benefits are paid whatever. Members of these unions can secure insurance from old line insurance companies at rates but slightly in advance over those charged for union benefits, but railroad work is so highly dangerous that old line insurance companies exact a relatively high premium for policies issued to railway employees. So well have the railroad brotherhoods managed their beneficiary systems that the Locomotive Firemen and Enginemen, for instance, are able to grant insurance to members for "considerably less than one half of company rates."[4] The advantage to be derived from affiliation with such an organization is so obvious that a railroad employee, facing daily the possibility of accident, is anxious to obtain membership. Again, since the violation of brotherhood rules may lead to expulsion from membership and loss of the right to participate in beneficiary features, members of the organization are seldom in need of other discipline. On the other hand, in those unions where the benefits paid possess no special

[1] As a matter of fact, on most of the important railway systems the brotherhoods have in their membership approximately seventy-five to ninety-five per cent. of all the employees eligible to membership.

[2] Kennedy, p. 41.

[3] Ibid., pp. 54–56.

[4] Ibid., p. 47.

attractiveness, it needs something more than the mere loss of their receipt to prevent "scabbing" and other infractions of union rules.

The Switchmen, the Maintenance-of-Way Employees, the Railroad Telegraphers, and the unions whose members are employed in railway shops also work in accordance with general orders covering both union and non-union men. The first three organizations pay substantial benefits and thus attract a large part of the men. The Boilermakers, the Machinists, the Metal Polishers, the Iron Molders, the Pattern Makers, and other metal trades unions, however, find that the open shop in the railroad shops works to their decided disadvantage, and have done all in their power to unionize the shops.

The attitude of the few other open-shop unions can be easily explained. The Masters, Mates and Pilots is an organization of officers which has as its chief purposes the payment of insurance and the securing of legislation. It is not a trade union and hence has no need of the closed shop. The National Association of Steam Engineers is an educational organization which has "nothing to do with the question of wages." The Steel Plate Transferers, as noted above,[1] can scarcely be called a trade union, as it does not attempt to regulate wages. The Letter Carriers and the two associations of Post Office Clerks, who also make no demand for the closed shop, are all under the classified service of the Federal Government, and their wages, hours, and other conditions of employment are regulated by Congress. There is no possibility, therefore, that wages will be cut by non-union men, or that preference will be shown them. The associations were formed chiefly to get civil-service employees in the post-office department to act together in presenting petitions to Congress through the postmaster general.

In sharp contrast to the policy of the Letter Carriers and the Post Office Clerks, the printing trades unions have enforced the closed shop in the United States Government

[1] See p. 31.

Printing Office and in the Canadian Printing Bureau. These unions claim that through the closed shop petty tyranny on the part of foremen is prevented. It is to be noted that only a small part of the members are in government employ. The closed shop does not here serve the interest of the government employees so much as that of the union as a whole. The exclusion of "scabs" and undesirable persons is national, and is presumably in the interest of all unionists. If the Government Printing Office were non-union, to that extent the system of national exclusion would be weakened.[1]

A "sentimental"[2] argument has also been advanced in favor of the closed shop as a trade-union device. Non-union men, it is said, are "industrial parasites" who do nothing to help organized labor fight its battles. "To say that the fruits of victory should come without effort, nay, as a reward for cowardice and disloyalty, is neither right in the realm of ethics or in the practical work-a-day world."[3] Consequently the non-unionist "should not consider it a grievance if at the conclusion of a successful strike he should be invited to join the union or work only with other non-unionists. . . . All that is demanded is that the cost and burdens of union management and action be fairly shared by these men in the future."[4] This argument fails to take account of the real motives for excluding non-unionists. Although resentment has often been aroused against non-unionists because they escape paying dues, as for example among the Paper Makers, there would be no discrimination against them if their presence did not endanger the enforcement of union wages and shop rules. Among the Railroad Trainmen, for instance, there have been no protests against the employment of non-members for "senti-

[1] "To recognize the principle of the union shop in all other parts of the nation, and then except the government employees, only means to use the government service as a club to destroy all that the honest and unceasing efforts of organized labor have accomplished" (American Federationist, January, 1905, p. 14).

[2] So termed by Prof. J. R. Commons in a paper before the American Economic Association in 1905.

[3] Darrow, p. 31.

[4] Mitchell, p. 280.

mental" reasons. This is because the open shop is not a menace in railroad work.[1]

An argument for the closed shop of which much has been made is that it increases trade-union membership. Experience has shown that there are always a large number of workmen "in and out of the union." They are "in the union" when they obtain a job in a closed shop; they are "out of the union" when they work in a shop where a union card is not necessary. It has been said that "the mere closing of one door to the non-unionist is the best argument to him for application."[2] Instances of marvelous growth in membership following the introduction of the card system have also been frequently reported.

A recent writer in dealing with a typical American trade union indicates the two ways in which the closed shop increases union membership. "In the first place, when the union has once unionized an office, it is able by requiring the exclusive employment of unionists to affiliate with itself every workman who thereafter obtains work in the office. The rule thereby tends to continue a control once obtained. The closed shop rule can be viewed in another aspect as a device for securing the unionizing of offices, and of thereby bringing in new members. If a local union controls a large part of the labor supply, the influence of the closed shop rule as a means of increasing the membership may be very considerable. If, for example, in a community where 500 printers are employed, 400 are members of the union, both the non-unionist workmen and their employers will be at a

[1] In New Zealand, where compulsory arbitration is in vogue, preference is given union men by the arbitration courts. "Among the arguments in favor of preference, the chief is that the unionists go to much trouble and expense to obtain concessions, not only for themselves but for other laborers and that non-unionists can obtain preference by joining the union. Also preference is sometimes regarded as a compensation to unionists for having given up the right to strike. Preference, too, protects active unionists from being victimized by their employers. . . . In brief, the question is practically the same as that of the closed shop in the United States" (Le Rossignol and Stewart, "Compulsory Arbitration in New Zealand," in Quarterly Journal of Economics, August, 1910, p. 680).

[2] Bookbinders, Official Proceedings of the Sixth Annual Convention, 1898, p. 21.

distinct disadvantage. A non-unionist workman, if he can earn the minimum rate, will be eager to secure access to the wider opportunities for employment which the unionist possesses. The non-union employer under such circumstances cannot discharge his workmen and thus reduce expenses so readily in times when business is slack as he otherwise would, for he cannot easily replace his employees from his restricted labor market. At times, for the same reason, he must go outside his home labor market, at expense and inconvenience, to supply himself with printers. But just as the closed shop rule is a powerful instrument for unionizing offices when the union is strong and controls a great part of the labor supply, so it is a hindrance when the union is weak. The unionist and the employer of unionists suffer in this case under the same disadvantage of a restricted labor market as non-unionists and the non-union employer do when the union is strong."[1]

Finally, it has been asserted in defense of the closed shop that the exclusive employment of union men is necessary in many trades because of the legal principle known as the "fellow-servant doctrine." In dangerous employments, it is said, skilled union men run constant risk from having to work with unknown non-unionists. If the latter, by careless acts, injure unionists, no redress is ordinarily to be had. If the shop is an open one, their discharge cannot be forced. As the common law requires "each to be responsible for the rest," it is maintained by unionists as in accord with the "most elementary principles of self preservation" that they should seek through the union to have some voice in choosing

[1] Barnett, pp. 290–291. One effect of the closed shop of which little mention has been made is that it tends in some unions to make employment more regular for members of the union. Since employers ordinarily hire workmen who are members of the union, no more workmen are brought into the union than are needed. When trade is brisk, forays are made by the union into open shops and the needed men are recruited. Such an argument applies most to those unions which not only force the preferential employment of their members, but also refuse admission to non-unionists when work is slack. Even, however, in ordinary closed-shop unions it is probable that unemployment is slightly less among the unionists than among the non-unionists in the trade.

their fellow-employees.[1] The fellow-servant argument, like the "sentimental" argument, is an afterthought on the part of zealous unionists and their sympathizers. No union was ever led by such an argument to introduce the closed shop. There are probably few employers who would continue to hire a habitually reckless workman. In a few cases, however, the argument has been seriously considered by the courts.[2]

It will thus be seen that the closed shop is used by trade unions as a device to gain certain ends. It is not an end in itself. It cannot be explained on the grounds of unreasoning prejudice against non-union men. It is an utterly mistaken view to regard it as a mere "passing phase" of unionism. It is also probably safe to say with Mr. John Mitchell that "with the growth of trade unionism in the United States the exclusion of non-unionists will become more complete."[3]

[1] Elevator Constructor, October, 1905, p. 15. See also Darrow, pp. 21–22.

[2] In rendering the majority opinion in the case of National Protective Association v. Cumming (170 N. Y., 315), Chief Justice Parker of the court of appeals said: "It cannot be open to question but that a legitimate and necessary object of societies like the defendent association would be to assure the lives and limbs of their members against the negligent acts of a co-employee. . . . It is well known that some men, even in the presence of danger, are perfectly reckless of themselves and careless of the rights of others. . . . These careless, reckless men are known to their associates, who not only have the right to protect themselves from such men, but, in the present state of the law, it is their *duty* through their organizations, to attempt to do so, as to the trades affording special opportunities for mischief arising from recklessness. . . . The master's duty is discharged if the workman be competent, and for his recklessness, which renders his employment a menace to others, the master is not responsible."

[3] Organized Labor, p. 285.

CHAPTER IX.

Social Aspects of the Closed Shop.

In the preceding chapter attention was confined to an exposition of the motives which have led the unions to enforce the closed shop. There still remains to be considered how far the closed shop is economically and socially desirable. This inquiry may be conveniently divided into three parts: (*a*) the effect of the closed shop upon the economic conduct of industry, (*b*) its effect upon the welfare of the non-union man, (*c*) its ultimate effect upon the unions themselves.

(*a*) *The closed shop and the economic conduct of industry.*—In recent popular discussion of the closed shop much emphasis has been put upon its uneconomical character. The charge is made that the demand for the exclusive employment of union men, by interfering with the right of an employer to "run his own business," makes high efficiency impossible.[1] This argument is based on the fact that the employer, under the competitive system, is alone responsible for the successful conduct of business undertakings. If he fails to produce as well and as cheaply as others do, the loss is his. It is necessary, therefore, for the most economic conduct of business that the employer "should have power to order his own affairs." He "should not be influenced by any other consideration in the hiring of men than the ability, fitness or loyalty of the applicant."[2] At the same time he should be free to reward exceptional workmen and to discharge those who are inefficient or insubordinate. He

[1] As early as 1836 the Master Carpenters of Philadelphia asserted their "right as Free Citizens" to run their business as they saw fit (The Pennsylvanian, March 17, 1836, p. 2. Reprinted in Commons and Sumner, Vol. VI, p. 53).

[2] Citizens' Industrial Association of America, Proceedings of the Adjourned Session of the First Convention, 1904, p. 11.

should be the sole judge as to the kind of machinery, tools, and material to be used. Only in this way, it is argued, can the employer secure that "effective discipline" which is essential in bringing about the "highest measure of success . . . in industry."[1]

The "essence" of the open shop is that the employer is entirely free "to hire and discharge."[2] It gives him, therefore, the opportunity for initiative, and subjects him to the control of no influence save that of the market. The closed shop, on the other hand, is attacked because it does not leave the employer free.[3] It denies him the "right to hire and discharge." If the employer wishes to hire competent non-union men, he is prevented from procuring their services if they cannot or will not obtain union membership. Often he is compelled because of a "waiting list" to hire the union men who have been longest out of employment regardless of their ability or fitness. The "walking delegate"[4] in some cases, it is said, usurps the employer's prerogative.

The employer complains that under the closed shop, instead of being able to secure workmen regardless of whether they are union or non-union, white or black, Catholic or Protestant, Jew or Gentile, he is compelled to draw from a definitely fixed labor market. Very often, too, this market is severely limited by the refusal of the unions on one ground or another to admit competent workmen to membership.[5] He cannot hire members of other unions who are competent to do the work because this will at once involve him in a jurisdictional dispute. One trial is enough to demonstrate

[1] Citizens' Industrial Association of America, Proceedings of the Adjourned Session of the First Convention, 1904, p. 11.

[2] The Open Shop, October, 1906, p. 479.

[3] Employers have complained that since they must discharge workmen who refuse to join a union, they virtually act as union organizers or business agents. They consider it highly improper that their aid should be requisitioned for trade-union ends.

[4] The name "walking delegate" is preferred by most employers to "business agent," the name now more ordinarily used by unions.

[5] "Further, by imposing large initiation fees or other penalties, the union may limit its membership, thus shortening the supply of labor, to the injury of the employer and of trade in general" (Statement of Marcus M. Marks, quoted in The Labor Compendium, August 28, 1904, p. 1).

the fact that members of rival unions tolerate each others' presence less than they do that of non-unionists. There is then no practicable way in which he can secure additional help when his work increases except by bidding for workmen against other union employers. It is also said that the closed shop serves to prevent the discharge of inefficient employees. If such persons are dismissed from employment, they try to make it appear that they have been "victimized" on account of union membership. Often they secure a sympathetic hearing from their union, and the latter forces their reinstatement.

Another evil attributed to the closed shop is that it establishes a minimum wage which becomes virtually also a maximum wage. This is said to produce a disastrous "dead level" of efficiency throughout an establishment and to discourage effort.[1] Accordingly union control is declared to be "absolute death to individual effort and ambition," and to cause the degeneration of "mental and moral fiber."[2] Restriction of output is the direct result of such conditions. Especially harmful does the closed shop become, in the opinion of its opponents, when a union requires foremen to obey its rules and to serve the union rather than the employers.[3] All closed-shop unions, it is represented, "define the workman's rights but say nothing of his duties. . . . They destroy shop discipline and put nothing in its place."[4]

To these indictments the advocates of the closed shop have made vigorous rejoinder. They assert that while the unions do not allow employers to "victimize" their members, they do not interfere otherwise with the "right to hire and discharge" as long as all persons who are hired become union members. It is also flatly denied that the minimum wage is usually the maximum, and that production is restricted in closed shops.

[1] The Open Shop, November, 1905, p. 522.
[2] Hibbard, "The Necessity of an Open Shop," in Proceedings of the American Economic Association, 1905, p. 181.
[3] Bulletin of the National Metal Trades Association, February, 1903, p. 80.
[4] Walling, "Can Labor Unions be Destroyed?" in World's Work, May, 1904, p. 4757.

The reconciliation of these conflicting statements of facts is possible. The opponents of the closed shop in discussing its economic effects always assume that the closed shop is everywhere the same, and take as typical those unions in which the restrictions on employment are most severe. The advocates of the closed shop assume as typical those unions in which the restrictions are mildest. If reference is made to a preceding chapter,[1] it will be noted that the unions vary widely in this respect. In some unions, employers are allowed to hire only such persons as have already become union members. In fewer cases employers are restricted to hiring persons who have been union members for a fixed period. That such rules are injurious cannot be denied. Compulsory "waiting lists," too, are found in a few unions; where such lists are in force the employer's right to hire and discharge is almost entirely destroyed.[2] In the majority of closed-shop unions, however, we have seen that the employer is allowed to hire non-unionists when competent unionists are not available, or even in many unions when they are available. It is also customary to allow such non-unionists to work a certain period in a shop before being required to join the union. There is little basis for the claim, therefore, that employers are restricted to hiring union men only. It is true that "scabs" and members of rival unions are rarely allowed to work. "Scabs," however, form but a small part of the men in any trade, and agreements between rival unions have now to some extent solved the problem of jurisdictional disputes.

If the union itself is closed, that is, will admit new members only with great difficulty, union employers have no means of obtaining additional help when their business increases. The closed union, however, although it is usually found with the closed shop, is not identical with it. To say that no more members shall be admitted to a union is an entirely different thing from saying that union men shall not

[1] See p. 59 et seq.

[2] According to the Eleventh Special Report of the Commissioner of Labor in 1904 (pp. 20–21), waiting lists were found in only a few unions.

work with non-unionists. It cannot be denied that the effect of "closing" a union is made economically important by the requirement that only members of the union shall be employed. If the union is closed but the shop is open, the excluded workmen alone are affected. But if a closed union enforces the closed shop, workmen, employers, and the consumer suffer loss. A highly objectionable feature to be found in certain closed-shop agreements is the provision that employers shall hire only members of a certain local union. The only economic method is to allow the employer to "take on" any one he will as long as such persons join the local union having jurisdiction.

There is much truth in the charge that some closed-shop unions have prevented the discharge of inefficient workmen on the score of "victimization."[1] The older unions have come to understand that nothing is gained by such a policy. They realize that employers cannot destroy the union by "victimizing" members if the persons they hire are required to become members. The closed-shop rule does not necessarily require any infringement on the employer's right to discharge. In instances where this right has been limited, use has been made of the power derived from the closed shop to enforce a union rule. It is quite possible for open-shop unions to seek to prevent their members from being dismissed from employment, even though they are incompetent or insubordinate.[2]

All unions that have advanced beyond the most rudimentary stage enforce a minimum wage. The tendency to uniformity and a "dead level" growing out of the existence of the minimum wage can only be connected with the closed shop through some restriction on the right to hire and discharge. If the union has a compulsory waiting list, it is easy to see how the minimum wage may become the maximum wage. As has been pointed out, however, compul-

[1] Eleventh Special Report of the Commissioner of Labor, 1904, p. 20.

[2] Charges to this effect have been freely made against the railway brotherhoods. See, for instance, Fagan, Confessions of a Railroad Signalman.

sory waiting lists are established in very few unions. Similarly, restriction of output is connected with the closed shop only through the waiting list. A great part of closed-shop unions do not have waiting lists.

It is also charged that the joint and extended closed shops lead to demands upon employers. When satisfactory conditions have been obtained in one trade, the men may be called out on strike because "unfair" material is used, or because the open shop exists in an allied trade. Moreover, the closed shop puts work "at the risk of and even invites jurisdictional disputes." Grievances "manufactured outside the shop" are thus said to be constantly arising. Complaint is also made that the closed shop is responsible for many unnecessary shop rules which virtually deprive the employer of control over his business.[1] One writer has gone so far as to say that "the amount of restriction which it may be expected to find in 'closed shops' will certainly amount to one-third of what the output should amount to."[2] Statements have frequently been made that the open shop has brought business prosperity to different communities.[3] It has been declared that "in no case . . . has the demand for a union shop been accompanied by a proposition for benefit to the employer."[4]

Taking up the last of these contentions first, the unions allege that closed-shop agreements are of distinct advantage to employers. It is pointed out that in some of the most aggressive closed-shop unions, such as the Bricklayers and Masons, the Longshoremen, and the Printers, local agreements have been "underwritten" by the national union

[1] "Of course, the gravest phase, to employers, of the 'closed shop' is that the unions, not satisfied with having obtained fulfillment of their demand that their members only be employed, forthwith proceed to assert under their rules the authority to control the shop and the methods used" (The Open Shop, January, 1905, p. 10).

[2] The Open Shop, January, 1905, p. 9.

[3] Thus at a dinner in Wilkes-Barre, Pennsylvania, in 1906 one of the speakers asserted that the open shop had proved to be the "greatest factor" in bringing prosperity to the city (The Open Shop, September, 1906, pp. 419–420).

[4] Pfahler, "Free Shops for Free Men," in Proceedings of the American Economic Association, 1902, p. 186.

when they provide for the exclusive employment of union members.[1] In open shops of most trades the employer is said to be constantly harassed with complaints from individuals. In closed shops all grievances must first be referred to the union, which acts upon many of them unfavorably.[2] Great stability is given to an agreement when a national union "underwrites" it. It is equally undeniable that most unions which have opportunity to enforce the extended or the joint closed shop have not hesitated at times to strike even when all their demands in the particular shop have been satisfied. Moreover, the closed shop has involved employers in wasteful jurisdictional disputes with which they have no real concern. Were there no closed shop such disputes would be robbed of all their bitterness.

The unions have also denied in a general way that their shop rules have been unduly restrictive. As a matter of fact, the great open-shop movement which began in 1901 was caused primarily by the rapid increase in rules regulating the number of apprentices, the kind of machinery that should be used, the methods of shop management, and the like. The connection between the closed shop and arbitrary shop rules is close, but the two are not identical. Arbitrary rules can rarely be enforced except in closed shops. If the union is strong enough to secure the one, it can, if it sees fit, enforce the other. Obviously, however, a closed-shop union need not, and many of them do not, have hurtful shop rules.

The defenders of the closed shop, however, have not contented themselves with endeavoring to answer their opponents. They have tried to show that the closed shop is an advantage to an employer. In the first place, they claim that the closed shop protects fair-minded employers from "cut-throat competition." If an industry is thoroughly unionized, every manufacturer or contractor can tell precisely what his competitors are paying in wages. As wages form the largest item in the average employer's expense

[1] The Bricklayer and Mason, November, 1903, p. 5.
[2] The Cigar Makers' Official Journal, April, 1899, p. 8.

account, it therefore becomes possible for him to "figure intelligently on his work," something which he "could never feel certain of were the open shop to prevail."[1] The same shop rules also apply in all union establishments. Under the open shop not nearly the same uniformity in competitive conditions can be secured. The closed shop is a device absolutely essential to the rigid and wide enforcement of union rules. Without it, the "check which the union rules have placed on the unscrupulous employer will be swept aside," and the "fair competitive basis" established under the closed shop will be destroyed.[2]

This argument can be valid only when applied to a sharply competitive industry which is thoroughly unionized. It would be absurd to claim that the closed shop tends to protect employers in the steel industry from "cutthroat competition." Likewise it would be extravagant to represent that one employer was put on a "fair competitive basis" with others if his shop alone were unionized. The argument is therefore chiefly applicable to trades, like the building trades, which are highly competitive and fairly well organized.[3] Even in the building trades only the larger contractors have ever been placed on a "fair competitive basis" with each other. The small contractor who runs a "one-man shop" is still free to cut prices.

Secondly, those who uphold the closed shop affirm that it tends to create a greater esprit de corps among the men than the open shop does. Union and non-union men represent two diametrically opposed ideas. The first stand for collective, the second for individual action. Consequently, there is constant conflict between the two in the endeavor

[1] Official Journal of the Brotherhood of Painters, Decorators and Paperhangers, July, 1904, p. 358.

[2] Kidd, "The Open Shop vs. Trade Unionism," in Proceedings of the American Economic Association, 1905, p. 198.

[3] Employers have frequently informed the Cigar Makers, the Garment Workers, the Granite Cutters, the Iron Molders, and building trades unions that they could not afford to unionize their shops unless the establishments of their chief competitors were also unionized. See, for example, The Granite Cutters' Journal, February, 1906, p. 4.

to obtain control over a shop. Because his men do not co-operate, the employer is likely to lose money.[1] Therefore as a business necessity open shops must become either union or non-union.[2] That there should be ill feeling between union and non-union men is easily understood when we consider why unions desire the closed shop. Non-union men are the economic enemies of unionists as long as employers resort to individual bargaining or express a dislike for full union control. In most open shops, therefore, there is an element of unrest and dissatisfaction. Even in the organizations which do not enforce the exclusive employment of members there is usually not the same cooperation between union and non-union men that there is between the unionists themselves. In particular, efforts are put forth to make the employment of "scabs" unprofitable. For this reason, after a strike of the Trainmen or Firemen has been settled, railroads have almost always discharged their strike-breakers quietly, but as quickly as possible.

Finally, unionists say that the closed shop is advantageous to employers because in many unions it carries with it the privilege of using a label that has a distinct market value. In the building trades it is represented that a contractor profits by employing unionists exclusively, since business agents always endeavor to secure jobs for "fair" employers. No union solicits work for an open shop.[3] A label, however, is an advantage to an employer only under certain conditions. It can be used to best advantage on articles largely purchased by the laboring classes. That a label increases sales on such goods is evidenced by the fact that manufacturers, solely for the purpose of obtaining the use

[1] The Bridgeman's Magazine, December, 1904, p. 15.

[2] "As the immortal Lincoln said, 'This country cannot long remain half free and half slave.' So say we, that any establishment cannot long remain, or be successfully operated, part union and part non-union" (American Federation of Labor, Proceedings of the Twenty-third Annual Convention, 1903, p. 20, President's Report).

[3] "The Bricklayers of New York and of a number of other cities are at times practically a collection agency for their employers. The annual agreement provides that no bricklayer shall work on a building for any one where money is owing to an employer until payment has been made" (The Bricklayer and Mason, November, 1903, p. 5).

of the label, have often asked that their establishments be unionized.[1] The labor journals not infrequently contain statements from employers that the closed shop is a "good business proposition."[2] But the label rarely effects an increase in the demand for expensive goods or for articles sold to women.[3] It is evident, therefore, that the number of employers who can find an advantage in the use of the labels is small relative to the total number of employers. Business agents are often able to secure jobs for "fair" building contractors, but if the building industry were thoroughly unionized, one employer would be able to secure no advantage over others in this way, since all would be equally "fair."

Neither employers nor unions have had much to say concerning the advantages of "exclusive agreements."[4] This is explained by the fact that such agreements are generally condemned as being in restraint of trade and therefore against public policy. Employers who are parties to them obtain a great advantage over competitors in localities where the unions are strong, since they secure a virtual monopoly of the labor supply. Consequently the employer outside the association is nearly always desirous to enter. He complains of the losses that come from having to employ non-union men, and is eager to agree to hire union men exclusively. But while the closed shop under such conditions may be an advantage to those employers with whom a union agrees to deal exclusively, the public interest suffers inasmuch as competition is effectively stifled.

To sum up the arguments against the closed shop on the ground that it affects unfavorably the economic conduct of industry, it may be said that the crux of the question is whether or not the "right to hire and discharge" is unduly

[1] See above, pp. 134–135.

[2] The International Bookbinder, April, 1905, p. 120. For union comments on open shops that have failed in business see The Granite Cutters' Journal, June, 1905, p. 2; Printing Pressmen, President's Report, 1908, p. 31.

[3] For an interesting discussion of the demand for label goods, see Spedden, p. 74.

[4] See above, p. 61.

restricted under the closed shop. The employer may enjoy the use of a valuable label and may be placed on a "fair competitive basis" with other employers. Individually the employer may reap a gain. But in the long run industry will be carried on less efficiently if by waiting lists or other restrictive devices the union interferes with the employer's hiring and discharging his working force in accordance with his best judgment. Similarly, a "closed union" restricts the employer in his choice of workmen. In those unions in which such practices exist the closed shop is to be condemned in that it is only through the device of the closed shop that waiting lists and arbitrary restrictions on membership can be made workable.

(*b*) *The closed shop and the non-union man.*—The opponents of the closed shop also declare that the closed shop is an injustice to unorganized labor. They assert that the demand for the closed shop "is in fact the demand for the installation of a labor monopoly."[1] For a union to exclude non-members from employment is denounced as an act of "criminal selfishness" because it deprives the latter of a property right in which they have as great an interest as unionists.[2] Ten or fifteen per cent. of the working class, it is said, are trying to prevent the remaining eighty-five or ninety per cent. from obtaining employment, although the latter consists more largely of persons, like women and immigrants, who have special need of protection and assistance.[3] Trade unions are therefore as "tyrannical" as capitalistic trusts, for they violate the principle of equal opportunity by aiming to "gain an advantage for the insiders over the outsiders."[4] The closed shop itself, therefore, is said to be "far from . . . a democratic invention," as it is "a means of promoting the interests of a certain group or class against the interests of the mass."[5]

[1] The Open Shop, September, 1906, p. 418.
[2] Ibid., November, 1905, p. 516.
[3] Bulletin of the National Metal Trades Association, October 1, 1902, p. 146.
[4] Report of the Industrial Commission, Vol. XIV, 1901, Review of Evidence, p. lxvii.
[5] Eliot, The Future of Trade-Unionism and Capitalism, p. 63.

In reply the unions have answered that it is not their purpose to establish a labor monopoly through the closed shop, that on the contrary it is the purpose of every union "to get every man following or engaged at a business to affiliate himself."[1] To this end vigorous campaigns for members are conducted among non-unionists, and "hundreds of missionaries are at work, in and out of season, urging and pleading with them to enter the wide-open doors of the union."[2] Furthermore, it is said that even if it is true that ninety per cent. of the wage earners in America are non-union, the great majority of non-unionists are "in occupations in which there are no unions at all, or in which the unions are too weak to think of challenging a contest over the employment of workers outside their organizations."[3]

Here again it seems to the writer that many of the critics of the closed shop have identified it with the closed union. If non-union men have no difficulty in obtaining union membership, it is hard to see how the closed shop can be condemned as a "criminally selfish" device. Only when a union declares that it will not work with non-members and then refuses to admit the latter to membership can monopolistic motives properly be charged.[4] Closed unions, however, are rarely found at present except in decaying trades. The closed shop is ordinarily intended not to restrict membership but to increase it, as has already been shown.[5] Even a union which is "closed" and refuses to work with non-members lacks many of the attributes of a capitalistic trust, as it does not aim to undersell non-members or to "exterminate men

[1] Operative Plasterers, Proceedings of the Eighteenth Convention, 1904, p. 45.

[2] American Federation of Labor, Report of Proceedings of the Twenty-third Convention, 1903, p. 20, President's Report.

[3] Iron Molders' Journal, June, 1904, p. 423.

[4] "If a union is working not for the interest of all the men at the trade, but of members who at the time are actually in the union, if it is unduly restrictive . . . then its refusal to work with non-union men is monopolistic and such a union should not be put up on a par with unions that refuse to work with non-unionists in the general interest of the trade" (Mitchell, p. 283).

[5] See above, p. 162 et seq.

to raise wages as Trusts have destroyed an excessive stock of goods."[1]

When all shops are unionized, however, not only will employers be completely at the mercy of organized labor, but non-unionists will also be compelled to obtain union membership whether they wish to do so or not.[2] Thus "liberty," "freedom of contract," and the "inalienable right" of a workman to secure employment "where and when he pleases" will be denied. The closed shop, therefore, is said to be "un-American," "un-democratic," and contrary to the principles embodied in the Declaration of Independence and in the Constitution of the United States. It injures individuals by impairing their privileges as citizens, and therefore it is pronounced to be against public policy. In reply the unions which enforce the closed shop maintain that they do not deprive non-unionists of their "right to work" in any real sense, since no man is privileged to take up any employment that appeals to him regardless of the desire of employers.[3] The only "right" which an individual mechanic has, if he does not see fit to accept such terms as are offered him, is the right to look for another job.[4] The unions argue, moreover, that even if they do exercise some compulsion upon non-unionists in order to bring them into membership,

[1] Macgregor, Industrial Combinations, p. 179. It is interesting to note that the Wall Street Journal (October 17, 1903, p. 2) compares the closed-shop union to "a trust which seeks by measures of persecution to drive an independent merchant out of business."

[2] But while some opponents of the closed shop condemn it on the ground that it excludes non-unionists from a livelihood, others, curiously enough, protest that the union aims to bring about a monopoly by "the forcing of all labor" into unions so that the latter "may better be able to dictate terms to employers" (Statement of T. F. Woodlock, Editor of the Wall Street Journal, quoted in The Bricklayer and Mason, November, 1903, p. 2). The Master Carpenters of Philadelphia in 1836 condemned the closed shop because it prevented union members "from working at the same building or in the same shop with any journeyman who is not a member, thus compelling him to join the Association and contribute weekly his earnings for the support of the idle and discontented" (The Pennsylvanian, March 17, 1836, p. 2. Article reprinted in Commons and Sumner, Vol. VI, p. 52).

[3] Stone Cutters' Journal, June, 1904, p. 2.

[4] The Bricklayer and Mason, November, 1903, p. 5.

it is with a view to conferring benefit upon them. The workman who refuses to join a union, therefore, is said to be injuring himself, since he gains his livelihood "at the expense of the permanent interest of all workingmen."[1]

Only on rare occasions have non-union men protested in a body against the establishment of the closed shop. In most of these instances, such as the appeal of non-union miners to the Anthracite Coal Strike Commission,[2] there is strong suspicion that the non-unionists took action at the instance of their employers and not upon their own initiative. There is no doubt, however, that many non-unionists in various trades have felt that to be required to become union members has been an imposition. Those who have been most firmly opposed to joining the union have probably been the exceptional mechanic and the workman of less than usual efficiency. The former feels able to shift for himself, and fears that the rules of the union may keep him from selling his skill as dearly as he might in a free market. The latter is hostile to the closed shop because he is excluded from employment in case he has not sufficient competency at his trade to obtain admission to membership or, if admitted, to receive the minimum rate.

In the long run the question will probably resolve itself into a consideration of the value of labor organization. Individuals may properly be made to suffer some loss by being compelled to act with others, or by being excluded from acting with others of their class, if it appears that the class as a whole is advanced by such action. What the non-unionist loses in "individual liberty," therefore, may be made up to him if his membership is necessary to enable the union to protect the conditions of work in its trade.[3]

Mitchell, p. 278.

[2] Bulletin of the Department of Labor, May, 1903, pp. 520–522.

[3] Professor E. R. A. Seligman in an address before the National Civic Federation in 1905 said: "Liberty must be looked at from the social as well as the individual point of view. The individual has become what he is largely through associated effort. This, however, implies a certain subjection of the individual to the group. The liberty that is compatible with social progress involves the readiness of the individual to work for a common end. If this readiness is not

(*c*) *The closed shop and trade unionism.*—The final argument directed against the closed shop is that it will ultimately prove the destruction of trade unions themselves. It is claimed that if workmen are induced to join a union through coercion, "the same process which deprives them of their freedom deprives the labor organization of that spirit of brotherhood which is at once the justification of its existence and the inspiration of its power."[1] Collective bargaining, it is urged, is highly desirable, but it will be "more speedily and permanently secured by the maintenance of free labor unions than by swelling the ranks of labor unions through processes of compulsion."[2] A combination of workmen to be "permanently efficient" must be composed "of members who believe in unionism and are loyal to it; it must be an army of volunteers and not of drafted men."[3]

In answer to the charges that their members are largely obtained through compulsion, some union leaders have retorted that "the scruples that the non-unionist is supposed to have against joining the union evidently exist only in the mind of the employer."[4] In the opinion of these writers, only "scabs," professional strike-breakers, and semi-criminals dislike to join a labor organization. Other unionists admit that "it is a fact much to be regretted that a large percent of all trade unions in this country consists of so-called forced membership."[5] They recognize that by means of the closed shop, social ostracism, and even physical force, union membership has been substantially increased.

We have already noted that one of the trade-union motives for enforcing the closed shop is that new members may be recruited. It would undoubtedly be disastrous if members were gained in no other way. But it is probably safe to say that most non-union men are not hostile to organization,

voluntary, it must be developed by persuasion or force." Quoted in the Broom Maker, June, 1905, p. 172.

[1] Editorial in The Outlook, July 16, 1904, p. 633.

[2] Ibid.

[3] Ibid., p. 632.

[4] White, p. 179.

[5] The Bricklayer and Mason, November, 1901, p. 6.

but are merely indifferent toward it. Consequently it is wrong to assume that every man who is compelled by the closed shop to become a union member remains anti-union at heart. Forced members have become in many instances ardent trade unionists. In fact, some of the men who are now national union officers originally joined their respective unions because they were compelled to do so or leave their jobs. On the other hand, many workmen resent having been forced to join an organization. Their resentment may even be carried so far as to induce them to act as informers for employers.[1] Certainly no union can afford to neglect the development of social, beneficiary, and other features that will induce men to join of their own accord. Voluntary membership is by all means the best, and a trade union cannot exist long if built on compulsory membership.

If it be true, as has been said, that "the excesses of unionism which have done and are still doing the greatest injury to the prospects of the movement are all traceable to the use of the arbitrary and coercive power of the closed shop," it is equally true that the closed shop is responsible for the greatest advances made by unionism. On the one hand, the closed shop, if universally enforced, would afford unions the opportunity to commit gross excesses by virtue of the power lodged with them. On the other hand, the closed shop opens the way to the highest and most efficient form of collective bargaining.[2]

Since regulation of employment is a matter of public concern, and since there is danger that trade unions may become arbitrary in exercising control over a trade, it has been suggested that the state should control their "constitution, policy and management."[3] In this way requirements for ad-

[1] "The union button does not make a unionist at heart. An enemy is sometimes more formidable within the lines than on the outside" (Mitchell, p. 284).

[2] "In the most perfected form of Collective Bargaining, compulsory membership becomes as much a matter of course as compulsory citizenship" (Webb, Industrial Democracy, p. 217).

[3] Bullock, p. 438.

mission to union membership and working rules could be regulated. State regulation, however, is likely to be introduced only after the closed shop has been widely enforced. At present, in the majority of trades, it is but partially enforced, and only with great difficulty.

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